

Kingsport Code Enforcement Review

(By MTAS, 2009)

Introduction

City Manager John Campbell requested that MTAS conduct an examination of Kingsport's code enforcement systems. MTAS consultant Pat Hardy was assigned to the project.

The following methodologies were used as a part of this study:

- Interviews were conducted with the City Manager, Assistant City Manager, City Attorney, Code Enforcement Coordinator, Building Official (and "Hearing Officer"), and Building Inspector.
- The Kingsport Municipal Code was reviewed for adequacy of ordinances related to code enforcement.
- State law was reviewed.
- The code enforcement practices of other communities were reviewed.
- Environmental Court programs were reviewed.

Overview

The process currently utilized by the City in reaction to complaints of code violations is a thorough, complete, and fair process. Steps include: receipt of complaint, investigation, water and power termination (if applicable) title search, Notice of Hearing, hearing procedures, *Dilapidated Building Report* (when applicable), Finding of Facts, Order of the Building Official, notice of demolition or clean-up, bids for demolition, and placement of the lien.

In general, the City's code enforcement program is excellent. Approximately 250 code-related complaints are received annually (this number has varied greatly in the past but has been as high as 600 in one year) and the vast majority of these are successfully resolved. In terms of the types of complaints received, approximately ½ are related to trash, junk, overgrown vegetation, or junk vehicles. The remaining are either "miscellaneous" or dilapidated structure complaints. Since 2000, approximately 20 dilapidated structures have been removed each year due to the City's enforcement efforts (either through removal by City contract or by the owner as a result of City actions).

An analysis of deteriorated housing removal in other cities can provide a comparison of enforcement efforts. A chart depicting removal rates in 8 cities similar to Kingsport in population is provided below. However, it should be noted that a number of factors influence figures related to deteriorated housing. Among these are:

- The age of the community and its housing stock.
- The city's building standards and the enforcement of such over time.

- The wealth of the community (and therefore the ability to maintain structures in a proper condition).
- The city's enforcement and removal efforts.
- The sustaining of enforcement and removal efforts over time.
- The political will of the governing body as it relates to enforcement of deteriorated structures.
- The city's population.

City (Population)	'08 City Removal	'08 Owner removal	'09 City Removal	'09 Owner Removal	Total for 2 Years
Johnson City (56,927)	10	10	0	3	23
Franklin (56,219)	1	9	0	11	21
Bartlett (46,954)	8	0	5	1	14
Hendersonville (43,164)	0	2	0	1	3
Columbia (33,055)	10	12	18	12	52
Oak Ridge (27,387)	0	4	3	1	8
Morristown (25,800)	0	0	0	1	1
Bristol (25,,573)	9	7	6	2	24

This data demonstrates the range of enforcement efforts undertaken by cities. But the data can be deceiving. That's because a community with long-term sustained enforcement efforts may only show a small number of demolitions due to the fact that most deteriorated structures have already been removed. On the other hand, it may be that a community with only a few demolitions has a less than effective enforcement program. So while the data can be misleading a look at these 8 cities shows that the Kingsport effort, with approximately 20 deteriorated structures removed each year since 2000, is an effective program.

The City's current code enforcement program is, for the most part, "reactionary." That is, it is not a proactive process. It relies on, and usually only reacts to, complaints. Being complaint-driven it does not have the resources or capacity to proactively enforce codes. Such a proactive approach can have an enormous impact, as word will quickly spread that the City has taken a new and more aggressive approach. However, in Kingsport's case additional manpower will be needed if the decision is made to proactively enforce codes (a few possibilities for providing a more proactive approach without additional manpower are provided later in this report).

Code Enforcement Processes

Each of the steps in the code enforcement process appear to be well documented and a tracking system for complaints is currently in place (it should be noted that a number of "tailored" complaint tracking software packages are available which would serve to greatly improve tracking procedures and assist with inspector notifications of each step in the enforcement process). A review of these steps is provided in the "Code Review" section.

On the structural side of the process, Kingsport utilizes four main divisions. The first is the Police Department, wherein the Code Enforcement Coordinator resides. The second is the Building Department where the Building Inspector(s) and the Building Official (also "Hearing Officer") resides. The third is the Legal Department where the City Attorney resides. And the last is the Municipal Court, where the City Judge operates. Each of these divisions must work together to effectively enforce the City's codes.

It appears as though these divisions do in fact work together quite well. Given the number of code violation complaints the City receives each year, and the number of these that are successfully resolved, the program is obviously working. However, there remain points in the code enforcement process where efficiencies could be applied.

A number of cities locate "Code Enforcement" in the Building or Development Services Divisions. In Kingsport's case these functions are somewhat decentralized. The Code Enforcement Coordinator currently reports to both the Chief of Police and the City Attorney. In terms of distribution of duties his duties are divided approximately $\frac{3}{4}$ related to Code Enforcement and $\frac{1}{4}$ related to other police duties. He also receives additional assistance as needed from another Police Officer.

Although this arrangement may seem fragmented, it seems to work. Additional enforcement capacity could probably be realized if the Code Enforcement Coordinator was housed in the Building Department and his duties were full-time code enforcement related. The need for additional assistance from another Police Officer would probably be eliminated if this was the arrangement, and improved coordination with Building Inspectors would also be realized. However, this is not a recommendation of this report, but it's something the City should consider if additional capacity for code enforcement is desired.

Review of the Kingsport Municipal Code Building and Property Maintenance Regulations

A review of applicable sections from the *Kingsport Code of Ordinances* is necessary in order to determine the adequacy of ordinances which undergird enforcement efforts. The review is divided into sections focusing on building construction and enforcement of standards, property maintenance, dilapidated properties, and junk vehicles.

All in all we find no additional ordinances needed in the *Kingsport Municipal Code* which are required for code enforcement. Suggestions for sections which could somewhat improve enforcement efforts are provided below.

Building Construction

The city has adopted appropriate building and construction codes. The city has established licensing boards (examiners) for examining and licensing of mechanical, plumbing, gas and electric contracting. The city has also established contractor bonding requirements. MTAS attorneys advise that

state licensed contractors with certifications for mechanical, plumbing, gas and electric contracting cannot be required to additionally obtain a local license. Since the state licensing board requires a bond for each license, it is also doubtful that the city can require additional bonds. The City Attorney should review the state contractor licensing laws and regulations as they relate to the requirements for local licensing.

Property Maintenance

It appears that the city primarily relies on the use of liens to enforce property maintenance standards. It is recommended that the city use city court to enforce property maintenance standards and use lien procedures sparingly. As an alternative, the establishment of an “Environmental Court” can help expedite the enforcement of property maintenance standards (see below for an explanation of the Environmental Court option).

Recommended Enforcement Procedures

I. **Owner Occupied.** For violation of city ordinances relating to tall grass and weeds, garbage, debris, rats, and other conditions considered health and safety issues by owner occupied properties, give a twenty (20) day notice for compliance (current practice is 30 days although 10 days is authorized in the City’s Code). If compliance is not obtained, cite the owner to municipal court for violation of the city ordinance. Unless municipal court actions are ineffective, do not mow the property and try to collect the costs. Tracking and collecting the fees is often ineffective. The city should use its police power before an impartial judge for enforcement provisions. The appeal of the city judge’s decision would be to the circuit court.

II. **Non-Owner Occupied or Absentee Owner.** For violation of TCA 6-54-113, that provides: (Note: the city is not required to adopt these procedures, just cite the state statute reference as has been done in the City’s Code)

a. If determined by the city’s inspector that any owner of record of real property has created, maintained or permitted to be maintained on such property the growth of trees, vines, grass, underbrush or the accumulation of debris, trash, litter, or garbage, or any combination of the above, so as to endanger the health, safety or welfare of other citizens or to encourage the infestation of rats and other harmful animals, the inspector shall provide notice to the owner of record to remedy the condition immediately. The notice shall be written in plain language and shall also include, but not be limited to, the following elements:

- (1) A brief statement of this section, which shall contain the consequences of failing to remedy the condition;
- (2) The person, address and telephone number of the department or person giving notice;
- (3) A cost estimate for remedying the condition, which shall be in conformity with the standards of cost in the community; and

- (4) A place where the notified party may return a copy of the notice, indicating the desire for a hearing.

The City's current *Notice of Hearing* does not conform to the requirements above. A specific recommendation in this regard is provided in the *Recommendations* section of this report.

b. If the person fails to remedy the condition within twenty (20) days after receiving the notice the inspector shall request the public works department or a contractor approved by the Board of Mayor and Aldermen to cause the condition to be remedied or removed. Public works shall estimate actual costs for their services or for the contractor and the inspector shall file a lien for cost recovery with the register of deeds and immediately log the lien into the lien book to be maintained by the city recorder. Do not use this procedure for owner-occupied properties. Once the lien is satisfied, file for release of the lien. Any appeal of the actions of the inspector is to the courts (as provided by state law). Note: While state law provides for a 10 day notice and a 20 day notice if the owner is engaged in certain transportation activities, MTAS recommends using a standard 20 day notice rather than trying to determine the various transportation activities.) The current Kingsport notice provides for 30 days, although the *Code* allows for any period between 10 and 30 days.

III. Dilapidated Properties. The city follows the provisions of the State Slum Clearance Law, which the city has adopted by ordinance. The procedures are:

The building inspector (public officer) on his own initiative or on a complaint that a structure is unfit for human occupation or use, should make a preliminary investigation of the basis of the complaint, if cause is justified, the inspector makes a formal complaint to the owner stating the charges and containing a notice that a hearing will be held before the inspector at city hall, not less than 10 days nor more than 30 days after serving the complaint, that:

- (A) The owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at city hall at the time noted in the complaint; and
- (B) The rules of evidence prevailing in courts of law or equity shall not be required.

If after the notice and hearing, the inspector determines that the structure is unfit for human occupation or use, the inspector shall state in writing his findings of fact in support of the determination and shall issue and serve upon the owners 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, requiring the owner, within the time specified in the order, to repair, alter or improve the structure to render it fit for human occupation or use or to vacate and close the structure as a place of human occupation or use; or
- (B) If the repair, alteration or improvement of the structure cannot be made at a reasonable cost in relation to the value of the structure, requiring the owner, within the time specified in the order, to remove or demolish the structure.

If the owner fails to comply with an order to repair, alter or improve or to vacate and close the structure, the inspector may cause such structure to be repaired, altered or improved, or to be vacated and closed; that the inspector shall post a placard on the main entrance of any structure so closed, with the following words: "This building is unfit for human occupation or use. The use or occupation of this building for human occupation or use is prohibited and unlawful."

If the owner fails to comply or remove or demolish the structure, the inspector may cause the structure to be removed or demolished; and the amount of the cost of the repair, alteration or improvements, or vacating and closing, or removal or demolition by the inspector, as well as reasonable fees for registration, inspections and professional evaluations of the property, shall be assessed against the owner of the property, and shall, upon the certification of the sum owed being presented to the municipal tax collector, be a lien on the recovery in favor of the city. Since some demolitions and alterations and improvements may cost more than the current value of the property, the city manager should be consulted prior to the work being done. The city's public works department may remedy the violation. The city may want to take the issue to chancery court in some instances. The appeal of the inspector's actions is to the courts.

Our review of the Kingsport code enforcement procedures reflects the process described above. Slight variations in the length of time given a property owner may occur, however.

In terms of process the City may want to consider having the Fire Inspector accompany the Building Inspector on inspections of dilapidated properties. TCA 68-102-117 provides for the designation of a Fire Chief or Fire Marshall to serve as "Assistant" to the Commissioner of Commerce and Insurance. The assistant can order repair or removal of any building or other structure whose condition makes it especially prone to fire, danger, or defects. This statute does not require prior notice and public hearing – an advantage over slum clearance laws. Under this statute the assistant to the commissioner can immediately issue an order and follow that with a citation if the property owner refuses to comply with the order within a reasonable time, usually at least 10 days. The owner still maintains a right to appeal, which can slow down the enforcement process. However, designation and use a fire inspector provides an additional avenue of enforcement.

It worth mentioning here again about the need for a quality complaint tracking software. The "Case Master Maintenance" software is now used, and it is not used to provide "flagged" notices, easy to follow tracking, automatic notices, or quality reports. For example, the current 30-day notice requirement is "kept in the minds" of the inspectors (or, an additional complaint may trigger the next action). Different software would provide time-based notice of each step in the enforcement process and provide necessary printed forms based on each step.

In addition, the “reasonable diligence” requirement to locate all property owners should be reviewed. There have been cases where it has taken 2 years to search for owners of properties and this has drastically delayed enforcement action. Here is what the *Kingsport Municipal Code* provides:

Complaints or orders issued by the building official pursuant to this division shall be served upon persons either personally or by registered mail. However, if the whereabouts of such persons are unknown and the whereabouts cannot be ascertained by the building official in the exercise of reasonable diligence and the building official shall make affidavit to that effect, the serving of such complaint or order upon such persons may be made by publishing the complaint or order once each week for two consecutive weeks in a newspaper printed and published in the city. 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 the county in which the structure is located, and such filing of the complaint or order shall have the same force and effect as other notices provided by law.

The City should more often consider using the “affidavit” and notice in the newspaper in order to move the process along.

Finally, current process provides that the initial letter to the property owner or occupant only requires that they “... either obtain a permit and repair the structure or raze and remove all debris from the property” (see Appendix B for a copy of the *Notice*). The inclusion of the word “either” has been interpreted to mean that the violator could simply obtain a permit and thus comply with the order. In other words they tend to leave it at that. This should be changed and the word “either” eliminated or a section should be added that gives a deadline for repair or removal.

IV. Junked or Abandoned Automobiles. Inoperative vehicles and equipment.

1. Discuss the violation and compliance requirements with the person violating the city's ordinance.
2. Give them a reasonable time to correct the violation (as provided in Section 102-581 of the *city Code*).
3. If the violation is not corrected within the time allowed, issue a citation to appear in city court for the violation of a city ordinance.
4. If the city judge fines a violator \$50 per day of violation plus court cost, the violator could reasonably be expected to remove the vehicles and/or equipment. If the judge is ineffective in enforcing the city's standard, direct the city attorney to initiate an action in chancery court to have the vehicles or equipment removed. MTAS does not recommend that staff or contractors go upon private property to seize vehicles and equipment without a court order. The appeal of the city judge's actions is to the Circuit Court.
5. The City's *Code* provides excellent guidance regarding procedures related to abandoned vehicles and the impoundment of such.

Environmental Court

The establishment of an “Environmental Court” can greatly aid the enforcement and public relations efforts of code enforcement officials. An excellent description of such a court’s purpose and affect has been provided by the City of Chattanooga:

“The Environmental Court Docket was established in 1991 to address compliance to environmental ordinances and create a better living environment within the City. Prior to this time, Chattanooga had little ability to enforce compliance with housing, zoning, and building ordinances. Although cited in court, cases were not given the same consideration by judges as other cases, thereby making enforcement difficult and leaving inspectors disillusioned and helpless. The docket was crowded with more serious criminal or traffic offenses that required the court's attention. The condition continued to deteriorate and the number of violators increased.

One afternoon each week was set aside to hear only these environmental cases, allowing the court to send a clear message that Chattanooga was going to clean itself up. In addition to hearing the cases in the courtroom, the judge has held on-site hearings (as necessary) to better understand the alleged ordinance violations and ensure fair and equitable treatment to all parties.

Since the Environmental Court Docket was established, the City has seen the compliance rate increase from 38% to 87%, City inspectors have renewed conviction in their jobs, and communities in Chattanooga are being restored. Safer and cleaner houses are made available to citizens, and the number of illegal dump sites has been greatly reduced”.

Some of the advantages of an environmental court are:

- Use of a single judge to hear cases (or, in the alternative, a specific time with a specific docket which allows the judge to focus only on code enforcement-related cases). Such a judge will become familiar with all aspects of code enforcement and will be able to track single violators as they move through the enforcement process. Multiple-situation violators can also be more easily tracked.
- A much more responsive system, quicker to bring a case to court and to see enforcement action applied.
- Less time spent by inspectors waiting to testify (they currently spend time waiting for other violations to be heard before code violations move through the docket).
- Use of stronger enforcement techniques (including fines for daily violations).
- Coordination of enforcement processes.

- Much improved motivation of enforcement officers and personnel. They no longer watch while cases are given additional compliance opportunities, time and time again, which can be extremely de-motivating.
- A likelihood that compliance will be increased as word spreads of the court's jurisdiction and enforcement capacity.

Information regarding environmental courts can be found in Appendix C. The establishment of such a court is an excellent proactive tool which can greatly improve the enforcement of nearly all code violations. In addition, it can also serve as a communications tool to the community that new and strengthened code enforcement procedures are in place, a communication which will likely result in improved voluntary compliance. And finally, such a court will help communicate the City's expectations and code standards.

Additional Recommendations

1. The City's mowing contract requires the contractor to carry a \$1 million bond. This being the case, only one firm is able to bid. Thus there is a lack of competition. The existing firms charges about \$100 per lot for mowing.
2. Give a 20 day allowance for remediation of owner-occupied orders, rather than 30 days.
3. The initial letter requiring a property owner to initiate repairs only requires that they obtain a building permit. It does not establish a deadline for completion of work. Many times a property owner will do nothing more than obtaining a permit. A deadline should be established and the property owner held to that deadline.
4. Per Article IX, Division 4, Section 22-773 the *Notice of Hearing* for non-owner occupied violations, the *Notice* should include a description of the consequences of not remedying the condition as well as a cost estimate for remedying the condition (see Appendix A for a copy of the existing *Notice of Hearing*).
5. Primarily use the courts to enforce property maintenance standards.
6. Review the "reasonable diligence" parameters related to location of property owners. Find ways this can be streamlined (e.g. use the "affidavit" and newspaper notification provisions).
7. Review the state licensing law requirements in relation to the local licensing requirements.
8. Consider utilizing the provisions of TCA 68-102-117 Et. Seq. in order to bring Fire Department personnel into the enforcement process.
9. The City may want to consider purchase and implementation of a code-specific complaint tracking software package.
10. Section 42-27 of the *Kingsport Municipal Code* provides for a \$25 penalty for littering. The city many want to increase this to \$50 and even up to \$500 for "Criminal Littering" as provided in TCA 39-14-501 Et. Sec.
11. Remove the word "either" from the initial *Notice* to violators or provide a section in the *Notice* that establishes a deadline for compliance.
12. The City may want to consider a "modified" proactive approach to code enforcement utilizing a program such as the "weed and seed" program. This program targets a specific neighborhood and implements a comprehensive approach to improvement, including new attacks on crime as well as a comprehensive code enforcement process. This has the effect of letting citizens know when a particular area will be addressed in a proactive manner. This tends to provide enough incentive for many citizens to address code violations on their own. It is considered a "modified" proactive approach because the focus is on a single area, not the entire community. The City of Bristol has an excellent example of a successful "weed and seed" program.
13. Consider establishment of an environmental court.
14. Support the *Tennessee Municipal League's* 2010 legislative platform section allowing cities to provide "administrative officers" who can hear building and property maintenance code violations and levy civil penalties (and determine the amount of time violators will be afforded to remedy the situation). It also provides that in the event a violator does not remedy a violation within the prescribed time, then the civil penalty will be imposed. And finally, it provides that

the determinations of an administrative officer are subject to judicial review by a chancery court.

Appendix A

Notice of Hearing

Appendix B
Initial Notice

Appendix C

Environmental Court Information

1. City of Memphis environmental court description.
2. Shelby County environmental court information.
3. The *Keep America Beautiful* Environmental Court Planning Guide.
4. Links to environmental courts in other states.

CITY OF MEMPHIS, TN

Mayor Willie W. Herenton

The Memphis Environmental Court

Traditional Enforcement

For well over a century, local governments have usually addressed environmentally destructive behavior by using code enforcement and the penalty systems of the court. However, traditional courts cannot always successfully ensure a safe environment, free of disrepair, litter and pollution.

In Memphis prior to 1982, non-compliance with the environmental codes - which include those governing substandard housing, unsafe buildings, abandoned automobiles, neglected properties, rodent harborage, animal control, health, housing, illegal dumping, graffiti and other kinds of vandalism, construction and fire codes -- was a matter of little legal consequence. The \$50 maximum fines that were occasionally imposed by the Memphis Municipal Courts were considered by most violators, particularly slumlords, to be a cost of doing business. It was far more cost-effective for these defendants to pay a minimal fine, rather than spend substantial sums to bring the properties in question up to code.

In Memphis, environmental violations primarily involve four City agencies: the Health Department, Fire Department, Housing and Community Development, and Building and Zoning Codes Enforcement. Environmental cases were distributed among eight municipal courts, all of which had criminal and civil jurisdiction. Violators were often told to comply with the relevant codes, and their cases would be continued for a period of time. The case would then be presented to a different judge by a different prosecutor. This system provided little opportunity for judges and prosecutors to become familiar with environmental cases. It also made it extremely difficult to maintain the continuity needed to adjudicate significant and often-complicated cases. Another serious drawback to the system was that many violators went unpunished altogether by receiving an unlimited number of continuances, or by having their cases dismissed outright by some judges.

A critical problem that the Memphis Municipal Courts faced was the procedural set-up of the system, which dictated that environmental code violation cases should be interspersed with all other cases. Inevitably, environmental violation cases appeared on the same docket as criminal cases including aggravated assault, rape and murder; as a result, environmental cases were viewed as insignificant. The morale and productivity of agency inspectors, who were responsible for reporting the violations and presenting cases to the courts, suffered due to the inability of the court system to deal effectively with environmental issues.

A Growing Problem in Memphis

In 1982, the problem of code violations in Memphis had reached a magnitude that could no longer be ignored. During that year alone, the Health Department received more than 700 complaints about rat infestation in public and private housing, and there were 44 rat bite cases reported. (The Health Department estimated that two or three times that number of people were actually bitten by rats, but only 44 sought medical treatment.) There were several thousand illegal dump sites of varying degree and size in Memphis and Shelby County. There were approximately 12,000 alleged health code violations reported in Memphis, and approximately 10,000 complaints relating to substandard housing.

Many substandard housing cases involved private owners who neglected their property to the point that it promoted urban blight and threatened public health.

Citizens in Memphis began demanding resolution to the environmental problems that plagued their neighborhoods. They started organizing politically to demand stronger code enforcement of the various municipal ordinances that impacted their neighborhoods. Elected officials realized that this citizen activism would require a streamlined approach to the manner in which code enforcement was conducted. But budgetary considerations, declining inspector morale, and the inefficiency of the court system itself threatened to undermine any changes to be made.

Development of the Memphis Environmental Court

In 1979, while attending Keep America Beautiful, Inc.'s national conference in Washington, D.C., Edith (Beaty) Heller, the executive director of the Memphis City Beautiful Commission (a KAB affiliate program since 1979), met David Jester of Indianapolis, the nation's first environmental court judge. Impressed by Judge Jester and the Indianapolis Environmental Court, she returned to Memphis with the idea of establishing a separate court in Memphis to hear environmental cases. The concept attracted the attention of Mark Hackett, Director of the Mayor's Action Center, Sanitation Director Claude Pearson, and Larry Potter, a former defense attorney and prosecutor, then with the Memphis Attorney's Office.

In August of 1982, Potter was appointed to a vacancy in the Municipal Court. A working group including Judge Potter, Hackett, Pearson, Heller and Joyce McMackin, Memphis City County Clerk, set about the task of establishing a separate environmental docket. In light of budget constraints, the group recommended that a separate, environmental docket be established, instead of creating an additional division of court and all cases of an environmental nature would be transferred to the purposed docket.

Creation of the Environmental Court

In 1983, the City of Memphis unveiled the nation's third environmental court. It was designed to serve as the chief vehicle for enforcing a wide range of laws relating to the health and quality of life of its residents, and to give new meaning to the term "expedient justice" by its ability to respond in a quick and consistent manner.

The new court was placed within an existing division of the Memphis Municipal Court, so it was implemented without any additional cost to taxpayers. The new environmental docket of cases was heard on Friday afternoons, with Judge Larry Potter presiding.

After a period of time, the advantages of the new environmental court became apparent. First, the judge could specialize in environmental laws and regulations, thus focusing on the seriousness of an offense in its proper context. Second, inspectors were no longer required to wait in court while cases involving other legal issues were discussed. This improved their morale as well as their productivity. Inspectors began to learn and understand the laws applicable to their cases and which arguments would find favor with the judge. Furthermore, the judge's decisions gave the code enforcement agencies the ability to fashion their cases in an appropriate manner, since the court developed its own set of binding precedents.

The third and perhaps most significant advantage of the environmental court was its effectiveness. If service could be obtained on a defendant, a case could be brought to court within a matter of days. In an emergency situation, a case could appear on the court's docket in 24 to 48 hours.

Swift action by the court greatly encouraged neighborhood groups throughout the city and promoted a renewed spirit of cooperation among civic and political leaders. The media also promoted the new court's innovative efforts as an example of how the government and the community could work together effectively to resolve local environmental issues.

With the advent of the court and with the assistance of the Litter Control Division of the Health Department, great progress was made and many hundreds of dump sites were eradicated. In 1988, because of budgetary restrictions, the Litter Control Division was eliminated, adversely affecting much of the progress that had been made. This was addressed in 1998 when the Housing and Community Development Department implemented an Illegal Dumping Force. In just one year, working through the court system the task force has been successful in eliminating numerous dump sites.

Yet it is important to understand that at this point the court was still jurisdictionally limited. Additional innovations were required to surmount the legal system's shortcomings.

One of these involved applying a new municipal code that defined each daily violation as a separate offense for which a fine could be assessed. This made violations that existed for lengthy periods of time very expensive propositions for defendants who were found guilty, as fines quickly escalated and often totaled as much as \$10,000. Suddenly, the cost of doing business for some defendants had increased dramatically.

Another innovation involved on-site appearances by Judge Potter. Once a guilty verdict had been reached or a guilty plea entered, the defendant would be informed of the judge's impending on-site visit, and the case would be continued to allow a reasonable period of time for the defendant to correct the violation. Most defendants did comply, and Judge Potter's practice of taking his courtroom into the community also gave residents an opportunity to see their government "in action."

Another way to increase compliance was to issue warrants for the arrest of those who ignored the court summons. In essence, the Warrant Squad of the Memphis Police Department would give the defendant an "engraved invitation" (arrest warrant) to make a personal appearance in court. Individuals arrested in this manner were required to post bond before they could be released from jail, and consequently the number of people who refused to come to court decreased substantially.

As another means of obtaining compliance, the judge would remit hefty fines if violations were cured quickly. If the court assessed a large fine against an individual, the defendant would be given an explanation of his constitutional right of appeal, and then told that the fine could be remitted if compliance was achieved within a reasonable period of time and verified by the case inspector. More often than not, defendants quickly rectified the problem.

By way of example, in one case an inspector from the Health Department approached the bench along with a young female witness with two small children. The defendant was a male in his 50s who appeared to be rather affluent but nervous. He was accused by the Health Department of a continuing violation of the health code in that the property he was renting to the young woman had defective

plumbing. Raw sewage was flowing from the broken pipes of her home and was pooling in the front yard. The young woman had for some time been trying to get the defendant landlord to repair the defective plumbing, but to no avail. She then turned to the Health Department for assistance. The young woman tearfully admitted that she had found her two small children playing in the raw sewage and she felt something should be done.

The defendant admitted that the plumbing was not functioning in a proper manner, but he did not intend to repair the problem since he was losing money on the rental property. He further stated that he resented the intrusion of the Health Department into his business and that he was embarrassed that a man of his stature was forced to "waste his valuable time by coming to court to deal with such trivial matters." After all proof had been taken, the judge found the defendant guilty and then asked his deputy to give the defendant a tour of the jail facility so that he could see how proper plumbing was supposed to work. He was given the choice of repairing the plumbing, or paying a fine and court costs for each day he was in violation. The plumbing was promptly repaired, but the court could not order the defendant to repair the problem because of the jurisdiction's limitations.

Despite the Court's innovations and the significant progress that had been achieved, much remained to be done. The main vehicle for gaining compliance remained the assessment of fines and, granted, they were substantial in some cases. However, the Memphis Environmental Court was still a municipal court, and it did not have the jurisdictional authority to order an individual to clean up alleged violations.

The Memphis/Shelby County Environmental Court

As a result of the negligent landlord case and others, Judge Potter and City and County officials worked to eliminate jurisdictional limitations posed by City and County divisions. In 1991 the Tennessee State Legislature created the Shelby County Environmental Court, and expanded the new court's powers to include the "injunctive authority" to mandate that defendants comply with the environmental codes. The court now could execute an order stating that the defendant must take action, or refrain from a certain action. Defendants who violated the court order would be held in contempt, which is punishable by jail time.

Evidence of the Environmental Court's success is exhibited in the fact that since 1991, approximately 95 percent of cases are brought to a successful outcome, resulting in the elimination of public health hazards and public and private nuisances.

Additional Factors for Success

The continued success of the Environmental Court relies on the participation of both citizens and governmental agencies of Memphis and Shelby County. Judge Larry Potter oversees the Environmental Court, and with the help of Memphis Mayor W.W. Herenton and Shelby County Mayor Jim Rout, he recently initiated a community service project that utilizes county probationers to clean up community neighborhoods. He has also helped to develop new anti-neglect legislation pertaining to private residential property, and is in the process of re-writing the Commercial Anti-Neglect Code.

Judge Potter also worked with both mayors to develop the "E-Team," an environmental S.W.A.T. team -- comprising inspectors selected from the Fire, Health, Housing, and Construction code enforcement agencies, based on their outstanding job performance - that pro-actively targets certain areas of the

city. With the support of both mayors, the judge established a Citizen's Environmental Review Panel. This required changes to existing municipal codes and the training of ordinary citizens, who are appointed by the mayors to serve on the Panel, in environmental regulations and laws. For the first time, private citizens in Memphis/Shelby County can present complaints to the Review Panel for their consideration, and the panel can approve a complaint for presentation to the court by an affidavit of complaint. The judge then initiates the legal process by having the defendant summoned to court.

Currently, Judge Potter is working to create the nation's first community-based environmental court. The court would sit in different areas of Memphis to hear cases that originate in those areas, with immediate input from the surrounding neighborhoods. This court, together with the community-based criminal court, would use defendants convicted of criminal charges arising out of local neighborhoods to clean up environmental violations in these areas, and would, in certain instances, allow local residents to supervise the work. Now, for the first time in the history of the Environmental Court, Memphis Police Department officers are writing citations based on environmental violations, supported fully by department officials.

Judge Potter travels extensively around the country, consulting and advising communities on the establishment of environmental courts. To date there are approximately 70 environmental courts across the U.S., many of which have been inspired by or patterned after the Memphis/Shelby County Environmental Court, which is considered to be a national model.

SHELBY COUNTY ENVIRONMENTAL COURT

Division XIV, General Sessions

201 Poplar Avenue, Suite L.L. 56

Memphis, TN 38103

Phone: (901) 545-3456

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Judge Larry Potter



The Memphis Environmental Court was founded in 1983 to serve as a "bridge over troubled water" for matters relating to the health and quality of life of our citizens. The purpose of the Court was to ensure that our children's legacy was that of a better Memphis.

Prior to the establishment of a separate court to handle environmental concerns, the Memphis city courts generally were ineffective in taking action against violations not covered by Federal statutes. The Memphis Environmental Court, however, gave meaning to the term "expedient justice" by its ability to readily and specifically respond to our community's environmental needs.

In 1991 the Tennessee State Legislature created the Shelby County Environmental Court and thus eliminated jurisdictional limitations posed by city and county divisions. The Court's powers were also expanded to aid enforcement of the law. For example, "injunctive relief", which can provide for jail sentences in addition to the fines previously imposed, was added to give "teeth" to existing local environmental

legislation.

Evidence of the Environmental Court's success is seen in the substantial growth of caseloads over the past five years. Gratifying results, such as repair of an indigent family's dwelling so that the children enjoy a healthier and happier home life, further demonstrate the successful actions of the Court.

Judge Larry E. Potter is a graduate of Memphis State Law School and has practiced law in Memphis since 1978. He was appointed to fill a vacancy on the Municipal Court in 1982, was elected to a full term in 1983 and was reelected in 1987. Judge Potter brings a varied professional background in municipal law to the bench. He served as an Assistant Public Defender, Chief Public Defender, Assistant City Attorney.

In 1983, he became the first Environmental Court Judge in Memphis, Shelby County and the State of Tennessee. And, in 1991 Judge Potter was appointed by the Shelby County Commission to the newly created position of judge for the Shelby County Environmental Court.

With his judicial experience, Judge Potter is considered **an authority on the subject of environmental law**. He travels throughout the United States consulting with governmental authorities on the establishment of environmental courts in their communities. His expertise gives him the insights needed to deal with the environmental issues confronting our community and its citizens. The continued

success of the Environmental Court relies on the participation of both citizens and government of Shelby County.

Judge Potter is committed not only to the Memphis and Shelby County of today, but also to the Memphis and Shelby County of tomorrow. Because our children are our future, we must all strive for a cleaner and safer environment for them.

Judge Potter is assisted by Paula J. Rhodes, who serves as the Program Administrative Specialist. She is in charge of all office operations and programs and is the national and local contact for the Shelby County Environmental Court.

The Shelby County Environmental Court concerns itself with four major areas of violations:

HEALTH CODE VIOLATIONS

During the fiscal year of 1991, the Health Department responded to over 15,000 environmental health complaints. Prompt action by the court attempts to correct hazards that pose a threat to the public health and safety of the citizens of Memphis and Shelby County. These matters encompass all areas of the city and county. These primary areas of environmental concerns include the following:

- **SANITATION** *These cases involve littering/illegal dumping, high grass and noxious growth, rat harborage/rat infestation, sewage outcropping, defective plumbing, improper food service operations and supervision of personal care homes. Some of these cases involve restaurants, stores and food vendors who sell food which represents a threat to consumers.*
- **MOSQUITO CONTROL** *Items may not accumulate so as to provide a breeding area for mosquitoes. Discarded and used tires are often responsible for offering a place for mosquitoes to breed. These cases obviously have a serious effect on the health and safety of citizens.*
- **RABIES CONTROL** *These cases involve dogs running at large, unlicensed and unvaccinated animals. Citizens often suffer dog bites in many of these cases and prompt action is required by the court.*
- **POLLUTION CONTROL** *These matters can involve air pollution, water quality violations, and asbestos removal. This area of the law will see more activity in the future, and more court cases can be expected as the result of an increased awareness by the public.*
- **INFECTIOUS DISEASES** *These cases involve sexually transmitted diseases (STD). Persons with known STD may be brought to court in order to require treatment by the department. The court may order such individuals to be examined, tested and treated to prevent transmission of STD to the community.*

HOUSING CODE VIOLATIONS

The Department of Housing improvement is responsible for citywide administration and enforcement of ordinances which establish minimum housing standards and regulate abandoned vehicles on public and private property. The department conducts systematic house-by-house inspections of designated geographic areas within the city and will also perform inspections in response to approximately 10,000 citizen complaints received annually.

Since substandard housing has become an increasing problem, this area of the law has received a great deal of attention in the past several years. Some of these cases involve landlords who offer substandard property for high rental prices. This is an area of the law that will see more activity in the future.

FIRE CODE VIOLATIONS

The Fire Protection Bureau of the City of Memphis Fire Department and the Shelby County Fire Department are responsible for reducing the hazards of fire in the city of Memphis and Shelby County. They perform their tasks in three (3) major categories: Fire Code Enforcement; Arson Investigation & Prosecution; and Public Fire Safety Education.

Compliance with fire code requirements is needed to provide reasonable regulations consistent with nationally recognized practices for the protection of life and property from the hazards of fire.

The type of violations brought to court may include arson, locked or blocked exit doors, failure to remove hazardous materials, dangerous accumulation of waste materials, failure to install smoke detectors, failure to install proper fire protection systems, leaking underground storage tanks, and failure to secure vacant buildings. Unfortunately many of these cases involve serious injuries and fatalities.

BUILDING & ZONING CODE VIOLATIONS

The Zoning and Codes Enforcement Ordinances were enacted to prevent excessive congestion of population and to encourage classification of land uses as to promote both urban and nonurban development. These ordinances are rather complicated in nature and court cases can be rather complex. They include standards to which buildings or structures must conform, such as; lot areas, set back and yard requirements, use limitations, parking, loading and storage requirements applicable to buildings, and uses of improper additions or alterations of existing buildings, special use requirements, site plan review, and cases involving Standard Building Code, Standard Mechanical Code, Standard Plumbing Code and Standard Gas Code. The Codes Enforcement Complaint Division makes approximately 12,000 inspections each year.

An Environmental Court Planning Guide for Local Officials, Legal Professionals and Community Educators



Developed by Keep America Beautiful, Inc.

A BRIEF HISTORY OF ENVIRONMENTAL COURTS

Keep America Beautiful's (KAB) role in the area of environmental courts is a direct result of our community affiliates long-standing involvement in local efforts to reduce litter and improve community waste handling practices. For many affiliates, the efforts have included the review and/or revision of litter and solid waste ordinances in cooperation with their local governments. In 1978, the nation's first environmental court was established in Indianapolis, Indiana. An ordinance review by the Indianapolis Clean City Commission provided the catalyst for its formation. After discovering city inspectors reported a daily average of 45 violations in the city's waste management and environmental codes, the committee recognized the need for a special court to hear environmental cases.

Armed with the facts, the Indianapolis affiliate proposed the concept of the new court to Mayor William Hulnut, who, in turn, urged the establishment of an environmental court. On July 11, 1978, the court was formally organized with The Honorable David Jester appointed as the court's first judge. His main focus was to change people's attitudes and behaviors. His sanctions included standardized "probation" requiring the defendant to work with the inspectors to correct the situation, and fines imposed for uncorrected violations. Judge Jester also made certain that the penalty reflected the offense and the offender.

Today 25 communities have environmental courts. Their dockets are reserved exclusively for violations of local health, safety, housing, building, fire, solid waste and litter ordinances. As more environmental cases are prosecuted, greater compliance with local laws is realized, resulting in a safer and cleaner community.

Many of these courts are modeled after the Memphis/ Shelby County (TN) Division 14 Environmental Court. This model court was organized in 1983 by city officials and the Memphis City Beautiful Commission, the city's local KAB affiliate. Similar courts have since been adopted in the state's three other major metropolitan areas, Nashville, Chattanooga, and Knoxville, with help from their local KAB affiliates,, court officials, and the state's Clean Tennessee program.

The Honorable Larry Potter, presiding judge of the Memphis/ Shelby County Division 14 Environmental Court recommended that Keep America Beautiful, Inc. identify and bring together environmental court judges to establish a resource group to further the environmental

court concept.

In 1991, a survey of KAB community affiliates on illegal dumping illustrated that this violation can be addressed effectively through an environmental court. Three quarters of the affiliates responding believed that illegal dumping of trash, yard waste, and construction or demolition debris was a major problem in their community. Further, fifty-three percent believed that illegal dumping was increasing.

Keep America Beautiful's initiative to create a national resource on environmental courts for all communities motivated by the benefits and environmental safeguards that these courts are now providing to American communities.

HOW TO ESTABLISH YOUR COURT

Creating an environmental court in your community requires research, planning, organizing meetings, and the involvement of municipal agencies and the local court system. Perhaps the single most important factor in motivating the community to create a new environmental court is your ability to demonstrate the need and the benefits that existing courts are returning to citizens and the environment.

Research the Facts.....

- Learn which local agencies enforce codes that are of interest to an environmental court. Areas can include building, fire, safety, public health, housing, solid waste, and environmental codes.
- Ask each agency for help in determining the number of violations that its inspectors report on a weekly, monthly or annual basis.
- Contact the prosecutor's office or clerk of the court at the court of general jurisdiction to learn how many cases are heard annually, and how many could be prosecuted by an environmental court.
- Determine the feasibility of establishing a court specifically designated for environmental matters, staffed by a non-rotating judge or a specialized docket of the general jurisdiction court.

Involve the People.....

- Write the persons at each agency, department, civic organization or court that would be involved in the court's formation. This would also include the mayor, council members, presiding judge, administrative clerk of the court, city or county attorney, county board, and other influential community leaders.
- Hold an informational meeting to explain the concept and gain consensus on the need for the court. Show KAB's Environmental Court video.
- Learn the location of the nearest environmental court. Consider sending a representative from the group to observe the court in action. (Contact KAB for a listing of the affiliate communities which have courts.

Plan Systematically....

- Collect copies of all applicable ordinances to define the jurisdiction of a new environmental court.
- Determine if the ordinances require revisions to strengthen enforcement or penalties.
- Set the court's guidelines

- Determine the method required for the formal organization of a court and plan the steps for filing all documentation.
- Identify potential judges who may serve on the court.
- Determine budgetary considerations that have to be addressed -additional personnel and operating costs,
- Legislation and ordinances , if required, must be written and passed by the governing body of the jurisdiction served by the court.
- Guidelines for sanctions, such as fines, community service, or jail stay, must be determined.
- A system for channeling cases to the environmental court must be specified .
- Everyone involved with the new court, including court reporter, clerk and attorneys, must be trained or oriented on the environmental court and its objectives.

Focus on Results....

- Hold periodic meetings of the organizing group to gather and distribute information about the new court's activities.
- Encourage the court to conduct training sessions for agency inspectors on how to prepare stronger cases for prosecution.
- Provide the environmental court judge with information about KAB and the American Bar Association's network of Environmental court judges.

Provide Reinforcement....

- Hold a press conference to announce the court's formation.
- Conduct a public awareness program to educate citizens about the court. Emphasize its major function is to change attitudes about waste handling and environmental or health concerns, and not necessarily to levy fines or penalties.
- Monitor the number of cases filed, the time between filing and action, and any attitude and behavior change.

Keep America Beautiful, Inc. has identified over 35 environmental court judges in 25 communities who can assist you and your community in establishing an environmental court. Many of these judges can serve as mentors or speakers to provide assistance and guidance to your new environmental court judge(s). The American Bar Association has established a specialty committee for environmental court judges. The Honorable Larry Potter and the Honorable Merideth Wright, a Vermont state environmental judge, are co-chairs of the committee. Please contact KAB at: 203-323-8987 to obtain a listing of environmental court judges.

Keep America Beautiful, Inc. (KAB), founded in 1953, is a national, not for profit education organization dedicated to improving waste handling practices at the community level and preserving the natural beauty and environment of America. Through its 500 local affiliates in 41 states, KAB is building partnerships with volunteer organizations, government agencies, and the private sector to improve the quality of life in American communities.

**Keep America Beautiful, Inc. 1010 Washington Blvd. Stanford, CT 06901-2202
Phone: (203) 323-8987 Fax: (203) 325-9199**

Specialty Courts
Specialized Courts
 Environmental Courts
 State Links

<u>Alabama</u> <u>Georgia</u> <u>Indiana</u>	<u>Missouri</u> <u>North Carolina</u> <u>Ohio</u>	<u>Oklahoma</u> <u>Oregon</u> <u>South Carolina</u>	<u>Tennessee</u> <u>Vermont</u> <u>Virginia</u>
<u>Alabama</u>	The <u>Mobile Municipal Court</u> handles environmental cases. Birmingham was implementing an environmental court.		
<u>Georgia</u>	Link to <u>SB 108</u> (1995-96) proposing an environmental court. The Cobb County Magistrate Court did implement an <u>environmental court</u> . Also see <u>Fulton County Department of Environment and Community Development</u> , which employs a court liaison.		
<u>Indiana</u>	Environmentally related civil cases are heard in <u>Marion Superior Court's Civil Division</u> .		
<u>Missouri</u>	St. Louis: this page from the <u>Dept. of Public Safety</u> refers (somewhat vaguely) to an Environmental Court Section of the Building Division.		
<u>North Carolina</u>	Durham's Community Life Court hears environmental cases, including misdemeanors. The 26th Judicial District, City of Charlotte, and Mecklenburg County partnered to create an <u>Environmental Court</u> . Court is held monthly; jurisdiction consists of housing, community health, solid waste, fire, building and zoning violations.		
<u>Ohio</u>	The <u>Franklin County Municipal Court's</u> Environmental Division handles environmental cases. Note, however, that despite its name, this is not a county court. Rather, the jurisdiction includes Columbus and suburban regions, and the court contracts with Franklin County. Subject matter jurisdiction includes State Environmental Protection Act and county health departments and all housing, building, zoning, and "urban quality of life" issues (vandalism, junk cars, etc.). Hamilton County: Klepal, Dan. " <u>Environmental Court to Form: City, County Joining to Fight Slumlords, Polluters.</u> " <u>Cincinnati Enquirer</u> (Mar. 14, 2002) Toledo Municipal Court, <u>Housing and Environmental Division</u> Cleveland Municipal Court (housing)		
<u>Oklahoma</u>	Oklahoma City's Environmental Court is described in the City Manager's Report (July 23, 2002).		

[Oregon](#)

Environmental cases on the civil docket of [Oregon's U.S. District Court](#) may be mediated. See Kloppenberg, Lisa A. "Implementation of Court-Annexed Environmental Mediation: The District of Oregon Pilot Project." *Ohio State Journal of Dispute Resolution*, vol. 17 (2001-2002): 559.

[South Carolina](#)

[Judiciary Home Page](#)

[Annual Reports](#)

[Tennessee](#)

Shelby County Environmental Court: The Memphis/Shelby County Division 14 Environmental Court was organized in 1983 by city officials and the Memphis City Beautiful Commission, the city's local [Keep America Beautiful](#) (KAB) affiliate. Similar courts have since been adopted in the state's three other major metropolitan areas, Nashville, Chattanooga, and Knoxville, with help from their local KAB affiliates, court officials, and the state's Clean Tennessee program. The court's comprehensive Web site includes legislation, a planning guide, contact information, and excellent links.

The City of Chattanooga has had an [environmental court](#) since 1991

[Vermont](#)

The **Vermont Environmental Court** has jurisdiction over requests to enforce and review administrative orders issued by the secretary of the Vermont Agency of Natural Resources. The court also hears appeals of zoning and planning decisions made by Vermont cities and towns. Hearings are held in locations throughout the state. There is one environmental court judge; daily operations of the court are the responsibility of the environmental court clerk.

[Environmental Court decisions](#) are online for 2001-2008, with decisions prior to 2001 available from the Vermont Department of Libraries.

Legislation: Vt. Stats. Tit. 4, ch. 27, §1001, [Environmental Courts](#).

The [Vermont Bar Association](#) coordinates volunteers for the state's Environmental Court Mediation Program.

[Virginia](#)

The **Wise County General District Court** sets aside the last Thursday of each month to deal with environmental cases such as littering, illegal dumping, and related civil offenses. See Stephen Igo, "[Trash the Topic During First Environmental Court in Wise](#)." *Kingsport Times* (October 29, 2006).

Kingsport Code Enforcement Review

By MTAS, 2009