

August 21, 2014

City of Lawrenceburg Tennessee
Mr. Chris Shaffer
City Administrator
25 Public Square
Lawrenceburg, Tennessee 38464

VIA ELECTRONIC MAIL

Dear Mr. Shaffer:

Please find enclosed for your information the following documents to assist you in the enhancement of your code enforcement program for the enforcement of tall grass and weeds:

- ✚ A draft ordinance to replace Sec. 13-102 of the Code of Ordinances regarding overgrown and dirty lots. The draft ordinance fully comports with TCA § 6-54-113 and addresses two limiting factors in your current code for efficient and successful enforcement by (1) removing the exception for owner occupied residences and (2) providing an administrative, rather than a board process, for appeals.
- ✚ Sample language for use in drafting new regulatory provisions addressing high weeds and grass for placement in the Code of Ordinance (Sec. 13-103). Two examples of stand-alone code provisions are presented that should be modified to best fit your community needs and situation, including the insertion of a time period for compliance. Please be advised that to mitigate due-process concerns, it is recommended that not less than a three (3) day notice be provided when the complaint is served in person and not less than a seven (7) day notice when the complaint is served by mail. I have inserted a subsection (d) in both samples that accomplishes this recommendation.
- ✚ Tennessee Code Annotated § 6-54-113 (without 2014 amendment).

As we discussed in your office, the city should choose between these two code provisions for enforcement action based on a situational analysis of each case:

Sec. 13-103 - The new Sec. 13-103 should generally be used in situations where you have an owner or tenant living in the dwelling and can cite them to city court, with compliance (i.e. mowing of the property) the expected outcome. Under this approach, please be aware that the city is not authorized to mow the lot and place a lien if the owner fails to comply with the court. My experience has found the court process to be an effective method to cause compliance – particularly with a city judge who recognizes the importance of code enforcement.

Sec. 13-102 – Sec. 13-102 (as amended) should be used in situations such as vacant property or where the owner cannot be easily cited to city court, and the likely outcome will require the property to be mowed by city crews or its contractor and a lien placed for the cost. This approach can also be used

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in the event of a failure, upon first try, to gain compliance through Sec. 13-103 action. While you indicated that you use force account to mow these properties, the use of city crews will open your liability exposure wider and can create other public relation and appearance problems best avoided by the city. Accordingly, it is recommended that the city use contractors to perform this work.

With respect to TCA § 6-54-113, please be mindful that this section was amended by the Tennessee General Assembly in 2014 to now require that the city publish a notice to the owner if it cannot serve the notice by mail when using this enforcement authority (Sec. 13-102). The amendment reads as follows:

When an attempt at notification by United States mail fails or no valid last known address exists for the owner of record, the municipality may publish the notice in a newspaper of general circulation in the county where the property sits for no less than two (2) consecutive issues or personally deliver the notice to the owner of record. For purposes of this section, such publication shall constitute receipt of notice effective on the date of the second publication of the notice and personal delivery shall constitute receipt of notice immediately upon delivery.

Previously, a city could simply rely on the address used by the county trustee for tax billing, and proceed with mowing the lot if no response was received and levying a lien for expenses. Although the above language indicates a city may provide notice by publication or personal service, MTAS attorneys believe it very likely that liens attached to property without providing such notice or personal service will be successfully challenged. Lack of personal service or notice is a primary defense to property liens, so this amendment provides a strong defense to property owners seeking the removal of such liens. Cities that do not levy liens, but treat mowing expenses as personal debts pursued through collections or court action, will also face challenges for failure to provide notice by publication or personal service.

Finally, with the adoption of a new Section 13-103, please remember to strike Section 302.4 in the International Property Maintenance Code when the 2012 edition is adopted as planned in the near future. This will remove inconsistent provisions between the 2006 International Property Maintenance Code and Sec. 13-103 of the Code of Ordinances going forward.

Please let me know if you have further questions regarding this matter.

Very truly yours,



Jeffrey J. Broughton
Municipal Management Consultant

Cc: Randy Jones
Melissa Ashburn