

City of Elkton

Property Maintenance Standards and Enforcement Recommendations The University of Tennessee's Municipal Technical Advisory Service By Ron Darden, Municipal Management Consultant

Introduction

Property maintenance codes address many of the health, safety, and aesthetic values of a community. Public officials and their constituents often complain that enforcement efforts are ineffective and take too much time. The administration and enforcement of property maintenance laws, ordinances, and codes often become difficult for a city. This report outlines standards for property maintenance, recommendations for enforcement of property maintenance standards, inspection and enforcement procedures, and recommended implementation provisions.

Legal Basis for Code Enforcement

The city's charter, adopted ordinances, and state laws outline the city's authority to develop, adopt, and enforce property maintenance standards. Tennessee Code Annotated (TCA 6-54-502) authorizes any municipality to adopt by reference the provisions of any code or portions of any code. Copies of referenced codes must be kept at the office of the city recorder, penalties may not be adopted by reference, and notices and the use of liens must follow strict requirements of the law.

Adopted Codes

The city's property maintenance laws are outlined in Title 13 of the City of Elkton's municipal code. The city should adopt the provisions of the State's Slum Clearance Law by ordinance, an ordinance prohibiting tall grass, weeds, trash, etc., and a junked vehicle ordinance. The city may use the provisions of TCA 6-54-113 for the enforcement of property maintenance codes.

General

The city's public officer (someone designated by the city board, who may be a police officer or building inspector) is responsible for the administration and enforcement of the property maintenance standards and the city's slum clearance ordinance. He is designated by ordinance as the "public officer" charged with the responsibility for enforcing property maintenance standards. A review of the property maintenance administration and enforcement procedures indicates:

- Enforcement of property maintenance regulations is a problem for owner occupied and non owner occupied or absentee property owners.
- Overgrown grass and weeds are a serious problem for the city.
- Property maintenance issues are often referred to the city attorney for enforcement.
- Dilapidated property complaints are referred to the city attorney for enforcement.
- A large percentage of the city's cost for mowing tall grass and weeds by the city is uncollectible.

- Slum clearance provisions are not used for the abatement of dilapidated properties.
- The administration and enforcement of the property maintenance codes are often ineffective and invariably complaints are brought before the city board for enforcement and resolution.

Based on the administration and enforcement procedures outlined above, it is clear that efficient and effective procedures are needed.

Property Maintenance Standards and Enforcement Focus

The focus of the property maintenance standards are:

1. The regulation of tall grass, weeds, junk and rubbish, and vegetation for owner occupied and unoccupied/vacant property.
2. The regulation of dilapidated structures within the city.
3. The regulation of junked vehicles within the city.

This report will outline effective procedures for the enforcement of city property maintenance standards.

The City Board

The city board should develop and adopt property maintenance standards, including policies, rules, regulations, procedures, penalties, and allow the public officer and the courts to function. Just as the board does not conduct a hearing when a police officer issues a citation for speeding, it is not necessary for

the board to conduct a hearing for a property maintenance citation. The violator has the options to comply with the city standards or appeal a decision of the public officer to the appropriate court before an impartial judge.

The board should convey to the public officer how aggressive it wants the property maintenance program to be. Shall the inspector only respond to complaints and requests? Shall the inspector survey and concentrate on strategic areas within the city? Shall he act on his own initiative? The board should decide and convey this to the public officer prior to any enforcement inspections and actions.

Many boards adopt aggressive property maintenance standards and enforcement procedures, and signal for the public officer to back off on enforcement efforts when citizens begin to complain. Board members must realize that citizens will generally complain about the public officer (building inspector) when he is doing an effective job in enforcing the standards that the board has adopted. When the public officer perceives that the board wants to back off of enforcement efforts, the property maintenance standards and enforcement efforts are often lacking.

General Recommendations

1. The public officer should maintain a log of all complaints received, including property maintenance complaints.
2. Require the public officer to file with the mayor a monthly report. (See Exhibit 4.)
3. By Resolution designate the inspector as a special police officer for the issuance of a citation. If the citation is refused, the

inspector should call a police officer and have the person arrested for refusing to accept the citation. (See Exhibit 2.)

4. Empower the public officer to inspect, give an order, provide a notice, and carry out the requirements of the notice to include alterations, repairs, demolition, and clean up of property which is in violation of the city codes. Under this procedure, the public officer can give a notice for the demolition of a dilapidated structure, follow the steps outlined in the code, and remove the structure unless a violator secures a court injunction to stop the action. No further permission from the city board is required to enforce the board's property maintenance standards. The inspector should review the cost of alterations, repairs, and demolition of property with the mayor prior to taking action because some costs may be unreasonable in relation to the value of the property.
5. Adopt a procedure for the recovery of costs where the city provides for repairs, alterations, or abatement of code violations. Include the recording of all liens in a book and a procedure for releasing the liens when the lien is satisfied. There are penalties associated with the failure to release a lien when the lien has been satisfied.
6. Follow the provisions of TCA 55-16-103 (1) (A) and (B) for the removal of abandoned vehicles left on the public rights-of-ways. This should be handled by police officers.

7. When access for inspections is denied, use the provisions of TCA 68-120-117 to obtain an administrative warrant for access. (See Exhibit 4.)
8. Adopt inspection procedures for junked or inoperative vehicles and equipment; dilapidated structures; grass, weeds, and noxious vegetation; and trash, junk and other offensive accumulations. Recommended procedures will be outlined in this report.
9. Use the provisions of the State Slum Clearance Law, which the city has or should adopt by ordinance, to enforce regulations relating to dilapidated properties.
10. The city attorney should provide legal advice to the mayor relating to code enforcement issues, represent the city in court initiated actions, and defend the city's interest when required. Only the mayor should authorize the services of the city attorney for code enforcement purposes. It is usually expensive to use the city attorney to enforce property maintenance standards on a routine basis.
11. Enact an ordinance prohibiting tall grass and weeds, debris, and noxious vines, and use the city court to enforce the provisions of the ordinance. Do not operate a grass mowing service, especially one that does not recover direct and indirect costs. (See Exhibit 1.)
12. Have the fire inspector accompany the public official on dilapidated structure inspections unless the public official is a certified building official. Fire safety code violations are often involved and the courts are more

prone to enforce regulations relating to fire safety codes where dilapidated structures are an issue.

Summary of Enforcement Procedures

The recommended procedures are:

1. For Owner Occupied Properties. Enforce city property maintenance provisions outlined in city ordinances, and cite violators to city court with any appeal to circuit court.
2. For Non Owner Occupied Properties. Use the provisions of TCA 6-54-113, which provides that non owner occupied properties in violation of property maintenance issues receive a 20 day notice. If the violation is not corrected within the 20 day period, the inspector causes the condition to be remedied and a lien is placed on the owner's property. Any appeal is to the court system. Do not use the lien procedures unless the property is unoccupied and the owner cannot be located.
3. For Dilapidated Properties. Use the city's slum clearance ordinance, conduct a hearing before the public official, and carry out the corrective action with any appeal to the courts. The city administrator should review and approve the cost for alteration, repairs and demolition. Sometimes the cost exceeds the value of the property.
4. For Junked Vehicles. Follow the procedures outlined in the municipal code and cite the violator to city court for non compliance. Only remove the junked vehicles from private property with a court order.

These procedures use the court system as the appeal process. MTAS recommends this procedure.

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. If compliance is not obtained, cite the owner or tenant to municipal court for violation of the city ordinance. 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 of Giles County.

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.)

1. 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.

2. The notice shall be given by United States mail, addressed to the last known address of the owner of record.
3. The notice shall state that the owner of the property is entitled to a hearing before the inspector (since we are talking about grass, weeds, and junk, it is not necessary that the hearing be before the city board. Such hearings only slow down the enforcement efforts. The hearing procedure is outlined in the above referenced state code).
4. 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 (see sample notice attached), 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.
5. If the person fails to remedy the condition within twenty (20) days after receiving the notice (use certified mail with return receipt) the inspector shall request the public works department or a contractor approved by the city board to cause the condition to be remedied or removed.

6. The public officer shall estimate actual costs for their services or for the contractor, and the inspector shall file a lien for cost recovery. (See Exhibit 5 to be used for liens relating to tall grass and weeds, trash, junk, etc.) Use Exhibit 6 for dilapidated properties. File a copy 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.
7. 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.)

III. Dilapidated Properties. The city should follow the provisions of the State Slum Clearance Law, which the city should adopt by ordinance. The procedures are:

1. 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.
2. 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 before the public officer at the time noted in the complaint.

3. The rules of evidence prevailing in courts of law or equity shall not be required.
4. 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. Note: The purpose of the hearing is for the inspector to ensure that he has all the facts and has not made an error.
5. 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.
6. 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, the public official shall require that the structure be demolished and removed from the property.
7. 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."

8. 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.
9. 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.

IV. Junked Automobiles. Inoperative vehicles and equipment enforcement procedures.

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.
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 of Giles County.

MTAS does not recommend that the city repair, alter, or renovate a structure for compliance enforcement except in unusual circumstances. Recovery of costs, even with a lien, may be ineffective. The code makes it unlawful to transfer ownership of property that has a notice of violation posted on it.

Implementation Procedures

MTAS recommends the implementation of the following:

- (1) The enactment of a property maintenance ordinance. (See Exhibit 1.)
- (2) The enactment of a resolution designating the public officer as a special police officer for the purpose of issuing citations. (See Exhibit 2.)

- (3) The use of monthly inspector reports. (See Exhibit 3.)
- (4) The use of administrative inspection warrants where access for inspections are denied. (See Exhibit 4.)
- (5) The use of attached lien forms or forms developed by the city attorney. (See Exhibits 5 and 6.)
- (6) Board advises the administrator as to the aggressive nature of the inspection and enforcement program.
- (7) Review MTAS recommendations with the city attorney.
- (8) The enactment of a slum clearance ordinance. (See Exhibit 7.)
- (9) The enactment of a junked vehicle ordinance. (See Exhibit 8.)

(Exhibit 1)

Ordinance No. _____

An Ordinance Providing Property Maintenance Standards

Be It Ordained by the Board of Mayor and Aldermen of the City of Elkton as follows:

Section 1. Littering Generally. It is unlawful for any person to throw or deposit or permit to be deposited or scattered upon any sidewalk, alley, street, bridge or public passageway, or upon any private property, any waste, waste paper, cans or other materials, litter, garbage, trash or rubble of any kind or to allow these items to accumulate upon public property immediately adjacent to and abutting that person's private property and between the private property and the public streets or alleyways upon which the property fronts. It is the responsibility of all owners and occupants of private property to keep abutting rights of way free and clear of rubbish, trash, etc. It is further the responsibility of private property owners and occupants to keep the rights of way upon which the property fronts mowed and clear of weeds, tall grass, etc.

Section 2. Accumulation of rubbish. It is unlawful for any person owning, leasing, occupying, or having control of property, regardless of whether the property is a vacant lot or contains any form of structure to permit the accumulation upon the property of garbage, trash, rubbish or other refuse in any form or nature, other than as authorized for city pick-up and disposal. All such accumulations are declared to be a public nuisance. The failure to clean up and remove such rubbish is a violation of this ordinance.

Section 3. Weeds and other vegetation.

- (1) It is unlawful for any person or other entity owning, leasing, occupying or having control of property in the city, regardless of whether the property is vacant or contains any form of structure, to permit the growth upon the property of weeds, grass, brush and all other rank or noxious vegetation to a height greater than twelve (12) inches when the growth is within two hundred (200) feet of other improved and/or occupied property or is within two hundred (200) feet of the right of way of any street, thoroughfare, or highway within the city.
- (2) Excluded from these provisions are tracts of land of five (5) acres or larger in unplatted, undeveloped areas (i.e., not in a subdivision approved by the city planning board, and the plat of which is recorded with the register of deeds, or in a subdivision developed prior to the creation of the planning board, a plat of which is of record with the register of deeds) or tracts that are being used for current agricultural purposes.
- (3) Property not exempt due to its size or the active practice of agriculture which is contiguous to parcel(s) of land that front on public streets or roadways, or contain any improvements shall be cleared of all weeds, tall grass and other noxious vegetation to within two hundred (200) feet of the property line of the developed property adjoining the subject tract and/or front property line adjoining the right of way of any street or roadway.

(4) Also excluded are natural wooded areas containing trees. As to these naturally wooded areas, the clearing requirements of this section extend only to the line of woods or trees adjoining developed (improved) property or public thoroughfares.

Section 4. It is also unlawful for any person or other entity to permit poison vines or plants injurious because of pollination or a menace to health, to grow in the city where they may cause injury or discomfort to any person, regardless of height, which plants are hereby declared to be a public nuisance. The failure to destroy poison vines or other such plants constitutes a violation of this section.

Section 5. It is unlawful to plant, maintain, or allow any vegetation, shrubbery, hedge rows, etc., so near or upon public road rights of way as to obstruct the view of a person driving in the roadway or otherwise constitute a hazard to vehicular and/or pedestrian traffic. Failure of owners of property adjoining the rights of way or owners of property upon which the vegetation exists to trim or remove it is guilty of a violation of this section.

Section 6. The failure to cut and destroy, weeds, grass, brush and all other rank or noxious vegetation not subject to the exclusions above constitutes a violation of this section and violators are subject to the general penalty provisions of this code.

Section 7. It is unlawful to transfer title to property that has a notice of violation posted on it.

Section 8. Violators of this ordinance shall be subject to a \$50 fine plus the cost for remedial measures necessary to bring the property into compliance with city standards. The city's general

penalty clause is a \$50 fine for the violation of municipal ordinances.

Section 9. The provisions of this ordinance are supplemental to other regulations and provisions adopted by the city board or allowed by state law.

Section 10. This ordinance becomes effective immediately upon passage by the city board and publication in the local newspaper.

Approved 1st Reading _____, 2010

Approved 2nd Reading _____, 2010

Mayor

Attest: City Recorder

(Exhibit 2)

RESOLUTION NUMBER _____

A RESOLUTION DESIGNATING THE PUBLIC OFFICER AS A SPECIAL POLICE OFFICER FOR BUILDING AND PROPERTY MAINTENANCE ENFORCEMENT

Whereas, the public officer of the City of Elkton is charged with enforcement of the various building and property maintenance codes of the city, and

Whereas, the public officer official does not have the necessary authority to cite offenders to city court, and

Whereas, the city desires that the public officer have the authority to cite offenders to city court;

Therefore, Be It Resolved by the Board of Mayor and Aldermen of the City of Elkton, Tennessee as follows:

Section 1. The public official is designated as a special police officer for purposes of enforcement of building and property maintenance codes violations.

Section 2. The public official is authorized to issue a citation or complaint for offenses relating to code violations under provisions of Tennessee Code Annotated §7-63-101, it being in the public interest that violators be brought before the city court for enforcement action.

Section 3. As a matter of local policy, when an offender refuses to accept a citation, the public

official shall call a police officer to affect an arrest for refusing to accept the citation.

Section 4. This Resolution is effective immediately upon its passage, the public welfare requiring it.

This Resolution passed this _____ day of _____, 2010.

Mayor

Attest: City Recorder

(Exhibit 3)

Monthly Property Maintenance Report to the Mayor

Date _____

Owner Occupied Properties

Number of tall grass and weed violations _____

Number of tall grass and weed notices _____

Number of violations cited to court _____

Non Owner Occupied Properties

Number of tall grass and weed violations _____

Number of notices mailed _____

Number of appeals _____

Number of hearings conducted _____

Number of liens filed to recover cost of remedy _____

Number of liens released _____

Junked Vehicles

Number of violations _____

Number of citations issued _____

Dilapidated Properties

Number of violations _____

Number of notices mailed _____

Number of appeals _____

Number of hearings conducted _____

Number of structure violations remedied _____

Cost recovered or lien filed _____

Liens released _____

Inspector

Date

(Exhibit 4)

ADMINISTRATIVE INSPECTION WARRANT

State of Tennessee, City of _____

To Building Official of the _____ (city),
State of Tennessee:

(1) Proof by affidavit having been made before me by
(name of city and building official) that
there is probable and reasonable cause, under
Tennessee Code Annotated Section 68-120-117, to
believe that violations of the (list ordinances
violated, either by general title or code
number) of the _____ (city) exist;

(2) Tennessee Code Annotated 68-120-113, and other
state statutes authorizes cities to conduct
inspections;

(3) A reasonable description of the property and
items to be inspected _____

(4) Purpose(s) of the inspection _____

(5) Other requirements of particularity required by
the constitutions of the United States and the
State of Tennessee, regarding administrative
inspections: _____

You are therefore commanded to make immediate inspection of the premises located at _____ (address) _____, including all of the buildings and outbuildings found on the premises. I certify that I signed and delivered this inspection warrant for execution to _____ at _____ o'clock, ___ m., on this the ___ day of _____, 20__.

Judge of the City Court

OFFICER'S RETURN

STATE OF TENNESSEE

(CITY)

The within warrant came to hand, and executed

On this ___ **day of** _____, **20** ___ **inspecting the**
premises herein described,

The (City) of _____ **and finding therein the**
violations named below:

VS.

Building Official of the (City) of _____

Affidavit and Inspection Warrant for

Violations of the ordinances of the City of
_____.

JUDGMENT

ON INSPECTION WARRANT:

Due and proper return having been made of the
Inspection warrant, and the within warrant,

Affidavit and return shall be filed in the office of
the city clerk for _____(city)_____

This ___ day of _____, 20__.

Judge of City Court

AFFIDAVIT

State of Tennessee

_____ personally appeared before me,
(City)

_____, the undersigned
Judge of the (city court),

_____ and made oath in due form of law
that there is probable and reasonable cause to believe
that violations of the ordinances of the city exist on
the premises at:

said violations believed to exist are as follows:

(list ordinances violated, either by general title or
code number)

This affidavit is made (from the personal observation
and knowledge of affiant) (upon information received by
affiant which affiant verily believes to be true) as
follows:

(Signature of Affiant)

Sworn to and subscribed before me this _____ day of
_____, 20__.

Judge of the City Court

(Exhibit 5-for tall grass, weeds, junk, etc.)

NOTICE OF LIEN

Under the authority granted to Tennessee municipalities in Tennessee Code Annotated, section 6-54-113(c), a lien in the amount of _____ \$_____, is imposed and established on the described property for the cost of clean-up of the property by the City of _____, the property owner of record of the property having failed or refused to clean-up the property or to request a hearing on the order to do so, after due notice by the City in accordance with Tennessee Code Annotated, section 6-54-113(b) [and/or section _____ of the Municipal Code of the City of _____ / Ordinance no _____]. This lien is second only to liens of the state, county, and municipality for taxes, any lien of its municipality for a special assessment, and any valid lien or right duly recorded or perfected before the filing of this notice.

DESCRIPTION OF PROPERTY SUBJECT TO LIEN:

[Add any provisions or other information required by local custom or practice.]

This lien filed in the Office of the Register of Deeds of _____ County, this _____ day of _____, 20__.

(Exhibit 6-for dilapidated structures)

NOTICE OF LIEN

Under the authority granted Tennessee municipalities in Tennessee Code Annotated, section 13-21-101 et seq., a lien in the amount of _____ (\$_____) is imposed and established on the described property for the cost of repairs, alterations, improvements, vacating, closing, removal or demolition by the City of _____. The property owner of record of the property has failed or refused to repair, alter, improve, vacate, close, remove, demolish the property or to request a hearing on the order to do so, after due notice given the property owner of record in accordance with section _____ of the Municipal Code of the City of _____/Ord. No. _____. This lien is second only to liens of the state, county, and municipality for taxes, any lien of its municipality for a special assessment, and any valid lien or right duly recorded or perfected before the filing of this notice.

PROPERTY DESCRIPTION

[Add any provisions or information required by local custom or practice.]

This lien filed in the Office of the Register of Deeds of _____ County, State of Tennessee, this _____ day of _____, 20_____.

Exhibit 7

City of Elkton

Ordinance No. _____

An Ordinance Adopting the Provisions of the State's Slum Clearance Law.

Be It Ordained by the Board of Mayor and Aldermen of the City of Elkton, Tennessee as follows:

Section 1. Title 13 of the Municipal Code is amended by adding Chapter 2 to read in its entirety as follows:

CHAPTER 2

SLUM CLEARANCE

SECTION

- 13-201. Findings of board.
- 13-202. Definitions.
- 13-203. "Public officer" designated; powers.
- 13-204. Initiation of proceedings; hearings.
- 13-205. Orders to owners of unfit structures.
- 13-206. When public officer may repair, etc.
- 13-207. When public officer may remove or demolish.
- 13-208. Lien for expenses; sale of salvage materials; other powers not limited.
- 13-209. Basis for a finding of unfitness.
- 13-210. Service of complaints or orders.
- 13-211. Enjoining enforcement of orders.
- 13-212. Additional powers of public officer.
- 13-213. Powers conferred are supplemental.
- 13-214. Structures unfit for human habitation deemed unlawful.

13-201. Findings of board. Pursuant to Tennessee Code Annotated, § 13-21-101, et seq., the Board of

Mayor and Aldermen finds that there exists in the city structures which are unfit for human occupation or use due to dilapidation, defects increasing the hazards of fire, accident or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering such dwellings unsafe or unsanitary, or dangerous or detrimental to the health, safety and morals, or otherwise inimical to the welfare of the residents of the city.

13-202. Definitions. (1) "Dwelling" means any building or structure, or part thereof, used and occupied for human occupation or use or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith.

(2) "Governing body" shall mean the Board of Mayor and Aldermen charged with governing the city.

(3) "Municipality" shall mean the City of Elkton, Tennessee, and the areas encompassed within existing town limits or as hereafter annexed.

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

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

(6) "Place of public accommodation" means any building or structure in which goods are supplied or services performed, or in which the trade of the general public is solicited.

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

(8) "Public officer" shall mean the officer or officers who are authorized by this chapter to exercise the powers prescribed herein and

pursuant to Tennessee Code Annotated, § 13-21-101, et seq.

- (9) "Structure" means any dwelling or place of public accommodation or vacant building or structure suitable as a dwelling or place of public accommodation.

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

13-204. Initiation of proceedings; hearings. Whenever a petition is filed with the public officer by a public authority or by at least five (5) residents of the city charging that any structure is unfit for human occupancy or use, or whenever it appears to the public officer (on his own motion) that any structure is unfit for human occupation or use, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of, and parties in interest of, such structure a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer (or his designated agent) at a place therein fixed, not less than ten (10) days nor more than thirty (30) days after the service of the complaint; and the owner and parties in interest shall have the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the time and place fixed in the complaint; and the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

13-205. Orders to owners of unfit structures. If, after such notice and hearing as provided for in the preceding section, the public officer determines that

the structure under consideration is unfit for human occupation or use, he shall state in writing his finding of fact in support of such determination and shall issue and cause to be served upon the owner thereof an order:

- (1) If the repair, alteration or improvement of the structure can be made at a reasonable cost in relation to the value of the structure (not exceeding fifty percent [50%] of the reasonable value), requiring the owner, within the time specified in the order, to repair, alter, or improve such structure to render it fit for human occupation or use or to vacate and close the structure for human occupation or use; or
- (2) If the repair, alteration or improvement of said structure cannot be made at a reasonable cost in relation to the value of the structure (not to exceed fifty percent [50%] of the value of the premises), requiring the owner within the time specified in the order, to remove or demolish such structure.

13-206. When public officer may repair, etc. If the owner fails to comply with the order to repair, alter, or improve or to vacate and close the structure as specified in the preceding section hereof, the public officer may cause such structure to be repaired, altered, or improved, or to be vacated and closed; and the public officer may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: "This building is unfit for human occupation or use. The use or occupation of this building for human occupation or use is prohibited and unlawful."

13-207. When public officer may remove or demolish. If the owner fails to comply with an order, as specified above, to remove or demolish the structure, the public officer may cause such structure to be removed and demolished.

13-208. Lien for expenses; sale of salvaged materials; other powers not limited. The amount of the cost of such repairs, alterations or improvements, or vacating and closing, or removal or demolition by the public officer shall be assessed against the owner of the property, and shall upon the filing of the notice with the office of the Register of Deeds of Giles County, be a lien on the property in favor of the municipality, second only to liens of the state, county and municipality for taxes, any lien of the municipality for special assessments, and any valid lien, right, or interest in such property duly recorded or duly perfected by filing, prior to the filing of such notice. These costs shall be collected by the municipal tax collector or county trustee at the same time and in the same manner as property taxes are collected. If the owner fails to pay the costs, they may be collected at the same time and in the same manner as delinquent property taxes are collected and shall be subject to the same penalty and interest as delinquent property taxes. In addition, the city may collect the costs assessed against the owner through an action for debt filed in any court of competent jurisdiction. The city may bring one (1) action for debt against more than one or all of the owners of properties against whom said costs have been assessed and the fact that multiple owners have been joined in one (1) action shall not be considered by the court as a misjoinder of parties. If the structure is removed or demolished by the public officer, he shall sell the materials of such structure and shall credit the proceeds of such sale against the cost of the removal or demolition, and any balance remaining shall be deposited in the Chancery Court of Giles County by the public officer, shall be secured in such manner as may be directed by such court, and shall be disbursed by such court to the person found to be entitled thereto by final order or decree of such court. Nothing in this section shall be construed to impair or limit in any

way the power of the City of Elkton to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise.

13-209. Basis for a finding of unfitness. The public officer defined herein shall have the power and may determine that a structure is unfit for human occupation or use if he finds that conditions exist in such structure which are dangerous or injurious to the health, safety or morals of the occupants or users of such structure, the occupants or users of neighboring structures or other residents of the City of Elkton. Such conditions may include the following (without limiting the generality of the foregoing): defects therein increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; or uncleanliness.

13-210. Service of complaints or orders. Complaints or orders issued by the public officer pursuant to this chapter shall be served upon persons, either personally or by registered mail, but if the whereabouts of such persons are unknown and the same cannot be ascertained by the public officer in the exercise of reasonable diligence, and the public officer shall make an affidavit to that effect, then the serving of such complaint or order upon such persons may be made by publishing the same once each week for two (2) consecutive weeks in a newspaper printed and published in the city. In addition, a copy of such complaint or order shall be posted in a conspicuous place on 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 Giles County, Tennessee, and such filing shall have the same force and effect as other lis pendens notices provided by law.

13-211. Enjoining enforcement of orders. Any person affected by an order issued by the public officer

served pursuant to this chapter may file a bill in chancery court for an injunction restraining the public officer from carrying out the provisions of the order, and the court may, upon the filing of such suit, issue a temporary injunction restraining the public officer pending the final disposition of the cause; provided, however, that within sixty (60) days after the posting and service of the order of the public officer, such person shall file such bill in the court. The remedy provided herein shall be the exclusive remedy and no person affected by an order of the public officer shall be entitled to recover any damages for action taken pursuant to any order of the public officer, or because of noncompliance by such person with any order of the public officer.

13-212. Additional powers of public officer. The public officer, in order to carry out and effectuate the purposes and provisions of this chapter, shall have the following powers in addition to those otherwise granted herein:

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

13-213. Powers conferred are supplemental. This chapter shall not be construed to abrogate or impair the powers of the city with regard to the enforcement of the provisions of its charter or any other ordinances or regulations, nor to prevent or punish violations thereof, and the powers conferred by this chapter shall be in addition and supplemental to the powers conferred by the charter and other laws.

13-214. Structures unfit for human habitation or use deemed unlawful. It shall be unlawful for any owner of record to create, maintain or permit to be maintained in the city structures which are unfit for human occupation or use due to dilapidation, defects increasing the hazards of fire, accident or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering such dwellings unsafe or unsanitary, or dangerous or detrimental to the health, safety and morals, or otherwise inimical to the welfare of the residents of the city. Violations of this section shall subject the offender to a penalty of fifty dollars (\$50.00) for each offense. Each day a violation is allowed to continue shall constitute a separate offense.

Section 2. This ordinance shall become effective upon final passage, the public welfare requiring it.

Passed First Reading this _____ day of November, 2010

Passed Second Reading this _____ day of November, 2010

Mayor

Attest: _____
Recorder

Exhibit 8

Ordinance No. _____

An Ordinance Prohibiting and Regulating Junked Motor Vehicles

Be It Ordained by the Board of Mayor and Aldermen of the City of Elkton, Tennessee:

Section 1. Title 13 of the Municipal Code is amended by adding Chapter 4 to read in its entirety as follows:

JUNKED MOTOR VEHICLES

- 13-401. Definitions.
- 13-402. Violations a civil offense.
- 13-403. Exceptions.
- 13-404. Enforcement.
- 13-405. Penalty for violations.

13-401. Definitions. For the purpose of the interpretation and application of this chapter, the following words and phrases shall have the indicated meanings:

- (1) "Person" shall mean any natural person, or any firm, partnership, association, corporation or other organization of any kind and description.
- (2) "Private property" shall include all property that is not public property, regardless of how the property is zoned or used.
- (3) "Traveled portion of any public street or highway" shall mean the width of the street from curb to curb, or where there are no curbs, the entire width of the paved portion of the street, or where the street is unpaved, the entire width of the street in which vehicles ordinarily use for travel.

- (4) "Vehicle" shall mean any machine propelled by power other than human power, designed to travel along the ground by the use of wheels, treads, self-laying tracks, runners, slides or skids, including but not limited to automobiles, trucks, motorcycles, motor scooters, go-carts, campers, tractors, trailers, tractor-trailers, buggies, wagons, and earth-moving equipment, and any part of the same.
- (5) "Junk vehicle" shall mean a vehicle of any age that is damaged or defective, including but not limited to, any one or combination of any of the following ways that either makes the vehicle immediately inoperable, or would prohibit the vehicle from being operated in a reasonably safe manner upon the public streets and highways under its own power if self-propelled, or while being towed or pushed, if not self-propelled:
- (a) Flat tires, missing tires, missing wheels, or missing or partially or totally disassembled tires and wheels.
 - (b) Missing or partially or totally disassembled essential part or parts of the vehicle's drive train, including, but not limited to, engine, transmission, transaxle, drive shaft, differential, or axle.
 - (c) Extensive exterior body damage or missing or partially or totally disassembled essential body parts, including, but not limited to, fenders, doors, engine hood, bumper or bumpers, windshield, or windows.
 - (d) Missing or partially or totally disassembled essential interior parts, including, but not limited to, driver's seat, steering wheel, instrument panel, clutch, brake, gear shift lever.

- (e) Missing or partially or totally disassembled parts essential to the starting or running of the vehicle under its own power, including, but not limited to, starter, generator or alternator, battery, distributor, gas tank, carburetor or fuel injection system, spark plugs, or radiator.
- (f) Interior is a container for metal, glass, paper, rags or other cloth, wood, auto parts, machinery, waste or discarded materials in such quantity, quality and arrangement that a driver cannot be properly seated in the vehicle.
- (g) Lying on the ground (upside down, on its side, or at other extreme angle), sitting on block or suspended in the air by any other method.
- (h) General environment in which the vehicle sits, including, but not limited to, vegetation that has grown up around, in or through the vehicle, the collection of pools of water in the vehicle, and the accumulation of other garbage or debris around the vehicle.

13-402. Violations a civil offense. It shall be unlawful and a civil offense for any person:

- (1) To park and or in any other manner place and leave unattended on the traveled portion of any public street or highway a junk vehicle for any period of time, even if the owner or operator of the vehicle did not intend to permanently desert or forsake the vehicle.
- (2) To park or in any other manner place and leave unattended on the untraveled portion of any street or highway, or upon any other public property, a junk vehicle for more than forty-eight (48) continuous hours, even if the owner

or operator of the vehicle did not intend to permanently desert or forsake the vehicle.

- (3) To park, store, keep, maintain on private property a junk vehicle.

13-403. Exceptions.

- (1) It shall be permissible for a person to park, store, keep and maintain a junked vehicle on private property under the following conditions:
 - (a) The junk vehicle is completely enclosed within a building where neither the vehicle nor any part of it is visible from the street or from any other abutting property. However, this exception shall not exempt the owner or person in possession of the property from any zoning, building, housing, property maintenance, and other regulations governing the building in which such vehicle is enclosed.
 - (b) The junk vehicle is parked or stored on property lawfully zoned for business engaged in wrecking, junking or repairing vehicles. However, this exception shall not exempt the owner or operator of any such business from any other zoning, building, fencing, property maintenance and other regulations governing business engaged in wrecking, junking or repairing vehicles.
- (2) No person shall park, store, keep and maintain on private property a junk vehicle for any period of time if it poses an immediate threat to the health and safety of citizens of the city.

13-404. Enforcement. Pursuant to Tennessee Code Annotated, a summons for violations of this ordinance on private property. The public officer shall upon the complaint of any citizen, or acting on his own information, investigate complaints of junked vehicles on private property. If after such investigation the public officer finds a junked vehicle on private property, he shall issue an ordinance summons. The ordinance summons shall be served upon the owner or owners of the property, or upon the person or persons apparently in lawful possession of the property, and shall give notice to the same to appear and answer the charges against him or them. If the offender refuses to sign the agreement to appear, the public officer may:

- (1) Request the city judge to issue a summons, or
- (2) Request a police officer to witness the violation.

The police officer who witnesses the violation may issue the offender a citation in lieu of arrest as authorized by Tennessee Code Annotated, § 7-63-101 et seq., or if the offender refuses to sign the citation, may arrest the offender for failure to sign the citation in lieu of arrest. In addition, pursuant to Tennessee Code Annotated, § 55-5-122, the municipal court may issue an order to remove vehicles from private property.

13-405. Penalty for violations. Any person violating this chapter shall be subject to a civil penalty of fifty dollars (\$50.00) plus court costs for each separate violation of this chapter. Each day the violation of this chapter continues shall be considered a separate violation.

Section 2. This ordinance shall be effective upon its passage, the public welfare requiring it.

Passed first reading this _____ day of _____, 2010

Passed second reading this _____ day of _____, 2010

Mayor

Attest: City Recorder