

HICKMAN COUNTY, TENNESSEE

RESOLUTION NO. 19-12

A RESOLUTION ADOPTING TCA 5-1-115 CONCERNING DILAPIDATED BUILDINGS AND DEBRIS INCLUDING REGULATIONS GOVERNING HEALTH AND SAFETY STANDARDS OF RESIDENTIAL AND NONRESIDENTIAL PROPERTIES WITHIN ALL UNINCORPORATED AREAS OF HICKMAN COUNTY

WHEREAS, the purpose of this resolution is to provide regulatory standards for health and safety conditions of residential and nonresidential properties of Hickman County; and

WHEREAS, Tennessee Code Annotated, Section 5-1-115, authorizes counties to make any rules and regulations necessary for the prevention of dangerous conditions resulting from the accumulation of debris, trash, liter, and garbage; or the presence of a vacant dilapidated building or structure; and

WHEREAS, there is a need in Hickman County for the regulation of residential and nonresidential property for the health, safety, convenience and welfare of residents of this County; and

WHEREAS, the Hickman County Planning Commission, at their regularly scheduled meeting held on April 4th, 2019, reviewed the request and recommended approval by a voice vote; and

WHEREAS, the required Public Hearing on his request has taken place, and the Board of County Commissioners of Hickman County, Tennessee, are desirous of approving it; and

WHEREAS, these regulations set out herein are intended to address such needs.

NOW, THEREFORE, BE IT RESOLVED by the Hickman County Board of Commissioners meeting in regular session on this day of April 22nd, 2019, that the following resolution be adopted:

REGULATION GOVERNING THE HEALTH AND SAFETY STANDARDS OF RESIDENTIAL AND NONRESIDENTIAL PROPERTIES

SECTION 1. Appointment of Enforcing Officer and Hearing Board

- a. These regulations shall be enforced by the Hickman County Building Commissioner (or designee) who shall also be known as the Hickman County Codes Enforcement Officer (hereinafter referred to as “Enforcement Officer”).
- b. The Hickman County Health and Safety Board (hereinafter referred to as the “Hearing Board”) shall consist of seven (7) members, consisting of County Commissioners. Commissioners shall be appointed in accordance with rules established in County Commissioner’s Handbook.

In addition to its responsibilities in hearing grievances pursuant to Section 6 of these regulations, the Hearing Board, in conjunction with the County Mayor, County Commission, and Enforcement Officer, shall also be charged with the responsibility of recruiting or coordinating efforts of community organizations, neighbors, religious institutions, and other agencies to provide assistance to persons who are not financially or physically able to comply on their own with the requirements of these regulations.

SECTION 2. Property Standards

a. Definitions

As used in these regulations, the following terms are defined below. Any term not defined by this regulation shall be interpreted as having the meaning established by the most current edition of the Merriam-Webster Collegiate Dictionary.

1. Accumulation of debris, trash, litter, or garbage means a state in which a significant quantity of solid waste products, decomposing matter, or personal property that has been discarded, damaged or which has little or no economic value or practical use is located on property such that one or more of the following conditions results: the accumulation contributes to the infestation of the property by insects, rodents or the accumulation creates an attractive nuisance

or other danger to children; the debris, trash, litter or garbage may spread to adjacent properties by natural action of wind or water; the accumulation produces offensive odors that affect reasonable enjoyment of adjacent properties; the accumulation creates a risk to the health and safety of occupants of the property or other residents of the county; or the accumulation noticeably depresses the value of adjacent properties. This term includes the accumulation of two or more junk motor vehicles (as defined in 3.) on the property. This term does not include the brief, temporary storage of debris, trash, litter or garbage for regular scheduled waste disposal or transfer.

2. Dilapidated building or structure means a structure that is unfit for human occupation or use due to conditions in or around such structures that are dangerous or injurious to the health or safety of the occupants of such structure, the occupants of neighboring structures or to the health or safety of other residents within the County, assuming ordinary health and sensibilities of a reasonable person. Such conditions may include but are not limited to: defects within the structure increasing the hazard of fire, accidents or other calamities, disrepair, structural defects, or unsanitary conditions.

3. Junk Motor Vehicles, as used in definition 1, means two or more abandoned or junked cars defined as any motor vehicle, including cars, trucks, buses, motorcycles, campers, boats and trailers, which does not have lawfully affixed thereto an unexpired license plate and/or tag and the condition of which is wrecked, dismantled, partially dismantled, inoperative, abandoned, or discarded and not within a protected sheltered structure. *This does not include tractors or farm equipment.* This shall not include any motor vehicles in operable condition specifically adapted or designed for operation on drag strips or racetracks or any vehicle retained by the owner for antique collection purposes. It shall be unlawful and considered to be a violation of this resolution to park, store, leave, or permit the same of any abandoned or junked or junked motor vehicle on any lot or parcel or any public right of way for a period in excess of one (1) week. The presence of any such vehicle or part thereof is hereby declared to be evidence of a violation of this resolution. The term shall not include items on the premises of an establishment constituting an

automobile graveyard within the meaning of Tennessee Code Section 54-20-201. et seq., and operating in compliance with the requirements of that part or establishments having facilities for processing scrap metal as licensed by the State of Tennessee.

4. Owner means the owner of record of the real property as established in the records of the register of deeds and assessor of property.
5. Structure means a building intended for human occupancy or use for residential, commercial, industrial or storage purposes. The term includes, but is not limited to houses, garages, commercial and industrial buildings, shops, storage buildings and sheds. **The term does not include structures built solely for occupancy for animals and/or storage of agricultural products or equipment.**
6. Screening: means the enforcing officer or Hickman County Health and Safety Board **may** consider screening of certain portions of properties that do not meet otherwise the standards of this resolution. Trash, litter or garbage that is considered to be a health or odor nuisance **shall not** be allowed to remediate by installing screening. Screening may be a 6-foot privacy fence or evergreen plantings that will immediately screen from adjacent properties or the right of way any other conditions considered to be a violation of this resolution.

b. Regulations

1. It shall be a violation of these regulations for any owner of property to create, maintain or permit to be maintained on property the accumulation of debris, trash, litter, or garbage so as to endanger the health, safety, or welfare of any person.
2. It shall be a violation of these regulations for any owner of property to create, maintain or permit to be maintained on property a vacant dilapidated building or structure that endangers the health, safety, or welfare of any person.
3. It shall be a violation of these regulations for any owner of property to keep Junk Motor Vehicles as defined within this resolution that endangers the health, safety, or welfare of any person.

4. It shall be a violation of these regulations for any owner of property to allow any violation or combination of the preceding elements identified in 1, 2, and 3 above to continue in, on or around any building, structure or property affected by this regulation.
5. Each day that one or more of the conditions described above exists or continues to exist shall constitute a separate violation of these regulations except to the extent that enforcement of the regulations are stayed pending a hearing as described in **Section 6**.
6. Screening may be required to resolve some issues at the Codes Enforcement Officer's or the Hickman County Health and Safety Board's discretion.
7. Any building that is used or could be used for farming/agricultural uses is exempt from the regulations contained in this Resolution.

SECTION 3. Owner Responsibilities

It is the obligation of the owner(s) of property to maintain such property so as not to endanger the health, safety, or welfare of County residents and/or as not to violate the term of these Regulations. If said property fails to comply with the above stated regulations, the property owner(s) is/are ultimately responsible and liable regardless of whether such condition was caused by a tenant, leaseholder or other person.

SECTION 4. Inspection Procedures

Whenever a formal complaint is filed with the Enforcement Officer alleging that violation(s) of any of these regulations exist; or whenever the Enforcement Officer on their own can visibly observe a violation, the Enforcement Officer shall, after making a preliminary investigation which discloses a basis for such violation, issue and cause to be served upon the owner of record of such properties a notice, in accordance with the provisions of Section 5, stating the violations and requesting the condition to be remedied immediately. A formal complaint must be filed in writing with the Enforcement Officer's public office. In order to have standing to file a Formal Complaint, the person shall live or have a property interest in a parcel of land located within 1500 feet (property

line to property line) of the property alleged to be in violation of these Regulations. The identity of the Complainant shall be a matter of public record.

SECTION 5. Notice of Violation

- a. The enforcement officer shall notify the owner of property of the violation(s) of these regulations by personal service upon the owner or by United States Postal Service, Return Receipt Requested, addressed to the last known address of the owner(s) of record as listed on property tax card. The notice of violation shall state that the owner of the property is entitled to a hearing. The notice of violation shall be written in plain language and shall also include, but not be limited, to the following elements:
 1. A summary of the requirements of these regulations and a brief statement of the violation noted by the Enforcement Officer including the date the violations were noted;
 2. A brief statement of the authority granted to counties under Tennessee Code 5-1-115 and an explanation of the consequences and penalty of failing to remedy the violation of the regulations;
 3. The person, office, address, and telephone number of the department giving notice.
 4. Instructions regarding what actions should be taken to remedy the violation together with a cost estimate for such which shall be in conformity with the standards of costs in the community; and
 5. An indication of the time frame during which the alleged violator must remedy the violation or request a hearing with information regarding the place where the notified party may return a copy of the notice of violation indicating the desire for a hearing or waiver of hearing and agreement to remedy the violation.
- b. If the whereabouts of the owner(s) of record is unknown and the same cannot be ascertained by the Enforcement Officer in the exercise of due diligence or if for any reason notice by Certified Mail, Return Receipt Request, cannot be obtained, the Enforcement Officer, after making an affidavit to that effect, may

then serve notice of violation upon such person(s) by publishing the same once each week for (2) consecutive weeks in a newspaper of local circulation. A copy of such notice of violation shall be posted in a conspicuous place on the premises affected by the notice or order. A copy of such notice of violation shall also be filed for record in the county registers' office and such filing of the notice of violation or order shall have the same force and effects as their pending lawsuit notices provided by law.

SECTION 6. Compliance and Appeals

- a.** Upon receipt of the notice of violation as provided herein above, the property owner shall proceed forthwith to take appropriate measures to comply with these regulations or to request a hearing before the Hearing Board established in Section 1 of these regulations. Pursuant to Tennessee Code 5-1-115 a request for hearing shall be made within ten (10) days following receipt of said notice of violation. If the property owner does not request a hearing, the property owner shall take appropriate action to remedy the violation within ten (10) days of receipt of the notice of violation unless the owner of record is a carrier engaged in the transportation of property or is a utility transmitting communications, electricity, gas liquids, steam, sewage, or other materials in which case the owner shall have twenty (20) days to remedy the violation, excluding weekends and holidays.
- b.** If the property owner timely requests a hearing as provided herein, the Hearing Board shall, within a reasonable time following the receipt of the request for hearing, hold a hearing on the issues of the appropriateness of the requirements imposed on the property owner and the issue of cost of remedying the condition. The time period established herein for remedying violation shall be stayed pending review by the Hearing Board. Failure to make the request for a hearing within the time limit allowed by this regulation shall, without exception, constitute a waiver of right to a hearing and judicial review.
- c.** The hearing shall be conducted as an initial hearing with the burden of proof resting on the Enforcement Officer to demonstrate, by a preponderance of the evidence that the alleged violation exists. Immediately following the hearing, the Hearing Board may:

 1. Dismiss the notice of violation and such notice shall become ineffective;

2. May confirm the notice of violation;
3. May modify the notice of violation; or
4. Grant a continuance at the request of either party if the Hearing Board considers the continuance appropriate.
5. The affirmative vote of four (4) Hearing Board members shall constitute action by such board.
6. Any person aggrieved by an act of the Hearing Board under the provisions of this regulation may seek judicial review under Tennessee Code Annotated, Title 127, Chapter 8, Part 1.

SECTION 7. Remedies and Penalties

- a. If the owner fails to comply with the notice within ten (10) days of receipt of notice, subject to stay pending review and any modifications made pursuant to review as provided, the Enforcing Officer or Hearing Board may cause such property to be repaired, altered or improved or be vacated and closed, removed or demolished as necessary to remedy the condition. Subject to approval by the County Commission, the Enforcing Officer or Hearing Board may contract with a private entity to perform the work or request such work to be performed by a department or agency of the county. In contracting for such services from a private entity, the Enforcing Officer or Hearing Board shall comply with all applicable purchasing procedures of the County. The cost of such action shall be assessed against the owner of the property. Upon performance, the actual costs of such repairs, alterations or improvements or vacating and losing or removal of demolition by the County or its agent shall, upon the filing of a notice with the office of the register of deeds, be a lien in favor of the County against the real property on which such costs was incurred, second only to liens of the state and county for taxes, any lien of the County 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. The notice of lien shall identify the owner of record of the real property, contain the property address, describe the property sufficiently to identify it and recite the amount of the obligation secured by the lien. These costs shall be collected by the County Trustee at the same time and in the same manner as property taxes are collected.

- b. Each day the property owner is in non-compliance with this Resolution shall constitute a separate civil offense for which the violation of shall be \$50.00 per day.
- c. Pursuant to Tennessee Code Sections 5-1-121 and 5-1-123, such penalties may be assessed by the General Sessions Court of Hickman County in exercise of its powers to enforce these regulations. Action to pursue such penalties in the General Session Court shall be instituted at the request of the Enforcement Officer or Hearing Board by the County Attorney or other legal counsel designated by the County Commission.

SECTION 8. Exceptions

- a. The County shall only undertake to remove vehicles in accordance with the provision of Tennessee Code 55-16-101, et seq. and in accordance with the limitation of Tennessee Code 55-5-122. If removal by the County of junk motor vehicles that are in violation of these regulations would conflict with the provisions of those statutes, any violation of these regulations that is caused solely by the presence of junk motor vehicles on private property shall only be enforced by civil penalties.
- b. This regulation shall not apply to any business operated pursuant to the Tennessee Solid Waste Disposal Act, Tennessee Code 68-221-101, et seq.

SECTION 9. Rules and Record Keeping

- a. In addition to these regulations, the Hearing Board may promulgate any additional rules and regulations necessary for the administration and enforcement of these regulations subject to approval by the County Commission.
- b. The Enforcement Officer shall serve as the record keeper for the Hearing Board and shall maintain all minutes and records of the Hearing Board. The Enforcement Officer shall also keep a record of the following information regarding petitions, inspections and enforcement actions:
 - 1. All petitions filed with the office;

2. The address of any property found to be in violation of this regulation;
3. A copy of all notices delivered to property owners found to be in violation of this regulation and any expenses associated herewith;
4. All waivers of hearing and agreements to remedy violations;
5. All request for hearing received;
6. Orders and decisions issued by the Hearing Board;
7. Copies of all requests for judicial review and final decision of the judicial review.

The Enforcement Officer shall submit an Annual Report summarizing the information to the County Commission at the first meeting each calendar year.

SECTION 10. Severability and Conflict with Other Resolutions

- a. If any provision of this resolution or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such invalidity shall not affect other provisions or applications of the resolution which can be given effect without the invalid provision or application, and to that end, the provisions of the resolution are declared to be severable.
- b. Where the conditions imposed by a provision of this resolution are less restrictive than comparable conditions imposed by any other provision of this resolution or any other resolution or regulation, the most restrictive provision shall govern.

SECTION 11. Effective Date

After passage of this regulation, the County Clerk shall cause the regulation to be published in a newspaper of general circulation within the County. This regulation shall become effective one hundred and eighty (180) days after its passage, the public welfare requiring it.

SPONSORS:

Austin Page,
2nd District Commissioner

Corey King,
6th District Commissioner

BOARD ACTION: _____ **Aye** _____ **Nay** _____ **Pass** _____ **Absent**

ADOPTED:

ATTEST:

Mark Bentley, Chairman

Casey Dorton, County Clerk

APPROVED/DISAPPROVED:

Mark Bentley, County Mayor

DATE: _____