

**TITLE 13**

**PROPERTY MAINTENANCE REGULATIONS<sup>1</sup>**

**CHAPTER**

1. MISCELLANEOUS.
2. JUNK VEHICLE REGULATIONS.
3. BETTER PROPERTY ORDINANCE.

**CHAPTER 1**

**MISCELLANEOUS**

**SECTION**

- 13-101. Health and sanitation nuisances.
- 13-102. Adulteration of food, drugs and cosmetics.
- 13-103. Pollution of waters.
- 13-104. Stagnant water.
- 13-105. Overgrown and dirty lots.
- 13-106. Overgrown and dirty lots--lessees.

**13-101. Health and sanitation nuisances.** It shall be unlawful for any person to allow premises owned by him or under his control to become a public health or sanitation nuisance because of a particular use or because of a failure properly to maintain. (1981 Code, § 8-901)

**13-102. Adulteration of food, drugs and cosmetics.** It shall be unlawful and a violation of this section for any person in this city to violate any provisions of the "Tennessee Food, Drug and Cosmetic Act." (1981 Code, § 8-902)

**13-103. Pollution of waters.** No deleterious or poisonous substance shall be thrown or be caused, permitted, or allowed to run or be washed into any waters, either private or public, in quantities injurious to fish life, or which could be injurious to the propagation of fish. (1981 Code, § 8-903)

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<sup>1</sup>Municipal code references

Animal control: title 10.

Littering streets, etc.: § 16-107.

Toilet facilities in beer places: § 8-211(9).

**13-104. Stagnant water.** It shall be unlawful for any person knowingly to allow any pool of stagnant water to accumulate and stand on any of his property located within the corporate limits. (1981 Code, § 8-904)

**13-105. Overgrown and dirty lots.** (1) Prohibition. Pursuant to the authority granted to municipalities under Tennessee Code Annotated, § 6-54-113, and as provided in section 301 of the 2006 International Property Maintenance Code as adopted by the city, it shall be unlawful for any owner of record of real property to create, maintain, or permit to be created or maintained on such property the growth of trees, vines, grass, underbrush, flowers, plants or any landscaping material and/or the accumulations of debris, trash, litter, or garbage or any combination of the preceding elements so as to endanger the health, safety, or welfare of other citizens or to encourage the infestation of insects, reptiles, rats and other harmful animals. For purposes of this prohibition, grass of any kind (including monkey or mondo grass) that exceeds ten inches (10") in height on occupied property and that exceeds eighteen inches (18") in height on unoccupied property, whether residential or commercial, shall be deemed to violate this section.

(2) Designation of public officer or department. The city's board of mayor and aldermen shall designate an appropriate department or person to enforce the provisions of this § 13-105. Unless otherwise designated, this section shall be enforced by the city's office of codes enforcement.

(3) Notice to property owner. It shall be the duty of the department or person designated by the board of mayor and aldermen to enforce this section to serve notice upon the owner of record in violation of subsection (1) above, a written notice in plain language to remedy the condition within ten (10) days; provided, however, that if 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, the notice period shall be twenty (20) days, excluding Saturdays, Sundays and legal holidays. The notice shall be sent by registered or certified United States mail, addressed to the last known address of the owner of record, or hand delivered with the deliverer obtaining the owner's signature confirming receipt of the notice. The notice shall state that the owner of the property is entitled to a hearing before the city's director of economic development and planning and shall, at the minimum, contain the following additional information:

(a) A brief statement that the owner is in violation of § 13-105 of the Millington Municipal Code, which has been enacted under the authority and that if the owner does not clean up the property within the time allotted, the property of such owner may be cleaned up by the city or its agent at the expense of the owner and a lien placed against the property to secure the cost of the clean-up;

(b) Such notice shall also state that in addition to the placing of a lien, the city may file suit in a court of competent jurisdiction to

recover its costs of clean-up and also cite the offender to city court as set out in subsection (9) below;

(c) The person, office, address, and telephone number of the department or person giving the notice;

(d) A cost estimate for remedying the noted condition, which shall be in conformity with the standards of cost in the city; and

(e) The name, office address and telephone number of the city's director of economic development and planning wherein the notified party may return a copy of the notice and indicate the desire for a hearing.

(4) Clean-up at property owner's expense. If the property owner of record fails or refuses to remedy the condition or to request a hearing before the director of economic development and planning within ten (10) days after receiving the notice (twenty (20) days as described above if the owner is a carrier engaged in the transportation of property or is a utility transmitting communications, electricity, gas, liquids, steam, sewage, or other materials), the department or person designated to enforce the provisions of this section shall immediately cause the condition to be remedied or removed at a cost in conformity with reasonable standards in the City of Millington, and the costs thereof shall be assessed against the owner of the property. 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 (1) or all of the owners of properties against whom such 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. Upon the filing of the notice with the office of the Register of Deeds in Shelby County, the costs shall be a lien on the property in favor of the city, second only to liens of the state, county, and municipality for taxes, any lien of the city 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 placed on the tax rolls of the city as a lien and shall be added to property tax bills to be collected 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.

(5) Clean-up of owner-occupied property. When the owner of an owner-occupied residential property fails or refuses to remedy the condition within ten (10) days after receiving the notice, the department or person designated by the board of mayor and aldermen to enforce the provisions of this section shall immediately cause the condition to be remedied or removed at a cost in accordance with reasonable standards in the City of Millington, with these costs to be assessed against the owner of the property. The provisions of subsection (4) shall apply to the collection of costs against the owner of an owner-occupied residential property, except that the city must wait until

cumulative charges for remediation equal or exceed five hundred dollars (\$500.00) before filing the notice with the register of deeds and the charges becoming a lien on the property. After this threshold has been met and the lien attaches, charges for costs for which the lien attached are collectible as provided in subsection (4) for these charges. The city shall not, however, be required to wait until cumulative charges for remediation equal or exceed five hundred dollars (\$500.00) before it files suit to collect such costs or cites the offender to city court.

(6) Appeal/hearing. The owner of record who is aggrieved by the determination and order of the codes enforcement officer or other person designated to enforce this section may appeal the determination and order to the director of economic development and planning. The appeal shall be filed with director of economic development and planning within ten (10) days following the receipt of the notice issued pursuant to subsection (3) above. The failure to appeal within this time shall, without exception, constitute a waiver of the right to a hearing.

(7) Judicial review. Any person aggrieved by an order or act of the enforcement officer or the director of economic development and planning may seek judicial review of the order or act. The time period established in subsection (3) above shall be stayed during the pendency of judicial review.

(8) Supplemental nature of this section. The provisions of this § 13-106 are in addition and supplemental to, and not in substitution for, any other provision in the city's charter, the Millington Municipal Code (including property management codes adopted by the city), or other applicable law which permits the city to proceed against an owner, tenant or occupant of property who has created, maintained, or permitted to be maintained on such property the growth of trees, vines, grass, weeds, underbrush and/or the accumulation of the debris, trash, litter, or garbage or any combination of the preceding elements.

(9) Violations/penalty. In addition to the liability for costs of remedy or removal of any condition described in this § 13-105, any property owner who violates this section may be cited to city court, and shall be subject to a civil penalty of fifty dollars (\$50.00) plus court costs for each separate violation of this section. Each day the violation continues after delivery of written notice to the property owner in accordance with this section shall be considered a separate violation. (1981 Code, § 8-905, modified, as replaced by Ord. #2011-7, May 2012)

**13-106. Overgrown and dirty lots/lessees.** (1) Prohibition. It shall also be unlawful, to the same extent set out in § 13-105(1), for any lessee of real property to create, maintain, or permit to be maintained on the leased property the excessive growth of trees, vines, grass, underbrush, flowers, plants, or any landscaping materials and/or the accumulations of debris, trash, litter, or garbage or any combination of the preceding elements so as to endanger the health, safety, or welfare of other citizens or to encourage the infestation of

insects, reptiles, rats and other harmful animals. For purposes of this prohibition, grass of any kind (including monkey or mondo grass) that exceeds ten inches (10") in height on occupied property and that exceeds eighteen inches (18") in height on unoccupied property, whether residential or commercial, shall be deemed to violate this section.

(2) Designation of public officer or department. Unless otherwise designated, this § 13-106 shall be enforced by the city's office of codes enforcement under the supervision of the director of economic development and planning.

(3) Notice to lessee. It shall be the duty of the department or person designated by the board of mayor and aldermen to enforce this section to serve notice upon a lessee in violation of § 13-106(1) a written notice in plain language to remedy the condition within ten (10) days; provided, however, that if 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, the notice period shall be twenty (20) days, excluding Saturdays, Sundays and legal holidays. The notice shall be sent by registered or certified United States mail, addressed to the last known address of the lessee, or hand delivered with the deliverer obtaining the signature of the lessee or, if the lessee is a corporation or other legal entity, a representative of the lessee, confirming receipt of the notice. The notice shall state that the lessee is entitled to a hearing before the city's director of economic development and planning and shall, at the minimum, contain the following additional information:

(a) A brief statement that the lessee is in violation of § 13-106 of the Millington Municipal Code, describing the violations with specificity, and that the property leased to such lessee may be cleaned up by the city or its agent at the expense of the lessee if the lessee fails to do so within the allotted time;

(b) That the city may file suit against the lessee in a court of competent jurisdiction to recover its costs of clean-up and may also cite the lessee to city court as provided in subsection (5) below;

(c) The person, office, address, and telephone number of the department or person giving the notice;

(d) A cost estimate for remedying the noted condition, which shall be in conformity with the standards of cost in the City of Millington; and

(e) The name, office address and telephone number of the city's director of economic development and planning wherein the notified party may return a copy of the notice and indicate the desire for a hearing.

(3) Clean-up at lessee's expense. If the lessee fails or refuses to remedy the condition or to request a hearing within ten (10) days after receiving the notice (twenty (20) days if the lessee is a carrier engaged in the transportation of property or is a utility transmitting communications,

electricity, gas, liquids, steam, sewage, or other materials), the department or person designated to enforce the provisions of this section shall immediately cause the condition to be remedied or removed at a cost in conformity with reasonable standards in the City of Millington, and the costs thereof shall be assessed against such lessee.

(4) Notice to owner/obligation of owner. If the lessee fails to clean up the property as required by the city, in addition to exercising its remedies against the lessee set out in this § 13-106, the city may give notice of the violation(s) to the property owner and require the property owner to clean up the property, in accordance with § 13-105.

(5) Violations/penalty. In addition to the liability for costs of remedy or removal of any condition described in this § 13-106, any lessee of real property who violates this section shall be subject to citation to city court and to a civil penalty of fifty dollars (\$50.00) plus court costs for each separate violation of this section. Each day the violation continues after delivery of written notice to the lessee in accordance with this section shall be considered a separate violation. (1981 Code, § 8-906, as amended by Ord. #2003-28, Dec. 2003, and replaced by Ord. #2011-7, May 2012)



## CHAPTER 2

### JUNK VEHICLES REGULATION

#### SECTION

- 13-201. Junk vehicles declared a public nuisance.
- 13-202. Definitions.
- 13-203. Violations a civil offense.
- 13-204. Exceptions.
- 13-205. Enforcement.
- 13-206. Penalty for violations.

**13-201. Junk vehicles declared a public nuisance.** The accumulation and storage of junk vehicles on public and private property is hereby found to create an unsightly condition upon the property tending to reduce the value thereof, to invite plundering, to create fire and safety hazards, and to constitute an attractive nuisance creating a hazard to the health and safety of minors. The accumulation and storage of junk vehicles on public and private property is further found to promote urban blight and deterioration in the city and to violate the zoning regulations of the city in many instances, particularly where such vehicles are maintained in the required yard areas of residential property. Such junk vehicles are in the nature of rubbish, litter, and unsightly debris in violation of health and sanitation laws. Therefore, the accumulation and storage of junk vehicles on public and private property, except as expressly hereinafter permitted, is hereby declared to constitute a public nuisance which may be abated as such, which remedy shall be in addition to any other remedy provided in this code. (As replaced by Ord. #1998-18, Jan. 1999)

**13-202. 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 which vehicles ordinarily use for travel.

(4) (a) "Vehicle" shall mean any machine propelled by power other than human power designed to travel along the ground by use of wheels, treads, self-laying tracks, runner, slides or skids including but not limited to automobiles, trucks, motorcycles, motor scooters, go-carts, campers, tractors, trailers, buggies, wagons, and earth-moving equipment, and any

part of such machines. (1981 Code, § 8-701, as replaced by Ord. #1998-18, Jan. 1999)

(b) "Junk vehicle" shall mean a vehicle of any age that is damaged or defective in any one, or in a combination of any two or more, 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:

(i) Flat tire, missing tire, missing wheel, or missing or partially or totally disassembled tire and wheel;

(ii) 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;

(iii) Extensive exterior body damage, or missing or partially or totally disassembled essential body parts, including but not limited to fenders, doors, engine hood, bumpers, windshield, or windows;

(iv) Missing, or partially or totally disassembled essential interior parts, including but not limited to driver's seat, steering wheel, instrument panel, clutch, brake or gear shift lever;

(v) 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;

(vi) 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;

(vii) Vehicle is 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; or

(viii) General environment in which the vehicle sits, including but not limited to vegetation that has grown up around, in or through the vehicle, collection of pools of water in the vehicle, or accumulation of other garbage or debris around the vehicle.

**13-203. 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 abandon 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 abandon the vehicle; or

(3) To park, store, keep or maintain on private property a junk vehicle for more than thirty (30) days. (As replaced by Ord. #1998-18, Jan. 1999)

**13-204. Exceptions.** (1) It shall be permissible for a person to park, store, keep and maintain a junk 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 or other regulations governing the building in which such vehicle is enclosed or the property on which such building is located.

(b) The junk vehicle is parked or stored on property lawfully zoned for a 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, property maintenance and other regulations governing businesses engaged in wrecking, junking or repairing vehicles or the property on which any such business is located.

(2) No person shall park, store, keep or maintain on private property a junk vehicle for any period of time if it poses an immediate threat to the health and safety of any citizens of the city. (As replaced by Ord. #1998-18, Jan. 1999)

**13-205. Enforcement.** (1) This chapter may be enforced in accordance with Tennessee Code Annotated (hereinafter referred to as "T.C.A." § 7-63-101 et seq. as follows:

(a) If the violation of this chapter occurs in the presence of a law enforcement officer or a member of the fire department or building department who is designated as a special police officer of the city, or if such officer makes a personal investigation of the place of violation and has reasonable and probable grounds to believe that the owner or occupant of property involved in a violation has violated this chapter, such officer shall issue to the offender a citation in lieu of arrest. Said citation shall contain a statement of the time and place the offender is to appear in court and a waiver of the issuance and service of a warrant, all as provided by T.C.A. §§ 7-63-101 and 7-63-102.

(b) If the offender refuses to sign the agreement to appear in court and to waive the issuance and service of a warrant, then the officer shall place the offender under arrest, take the offender before the proper

authority, procure a warrant and serve the same upon the offender and book the offender as in other cases of violations.

(c) If the offender signs the agreement and waiver and then fails to appear for trial at the time and place designated, the court shall issue warrants and otherwise proceed in accordance with T.C.A. § 7-63-105.

(2) This chapter may also be enforced in accordance with T.C.A. § 7-63-201 et seq. as follows:

(a) If the city has made a designation of a municipal enforcement officer in accordance with said section, such officer may, upon witnessing a violation of this chapter, issue an ordinance summons to the offender. The ordinance summons shall show the offense charged and the time and place when the offender must appear in court.

(b) The ordinance summons shall be treated as a citation in lieu of arrest as described above and as provided for in T.C.A. §§ 7-63-102 and 7-63-103.

(c) If the offender refuses to sign the ordinance summons agreement to appear in court, the officer may have a summons issued by the clerk of the court, or may seek the assistance of a police officer to witness the violation. The police officer who witnesses the violation may issue a citation in lieu of arrest or make arrest for failure to sign the citation in lieu of arrest, as described above and as provided in T.C.A. § 7-63-104.

(d) Failure of the offender to appear for trial after signing the ordinance summons agreement shall cause the court having jurisdiction thereof to issue a warrant against the offender, as described above and as provided for in T.C.A. § 7-63-105. (As replaced by Ord. #1998-18, Jan. 1999)

**13-206. Penalty for violations.** Any person determined to be in violation of this chapter shall be subject to a civil penalty of \$500 for each separate violation of this chapter. Each day the violation of this chapter continues shall be considered a separate violation. (As replaced by Ord. #1998-18, Jan. 1999)

### CHAPTER 3

#### BETTER PROPERTY ORDINANCE

##### SECTION

- 13-301. Findings of board.
- 13-302. Definitions.
- 13-303. "Public officer" designated; powers.
- 13-304. Initiation of proceedings; hearings.
- 13-305. Orders to owners of unfit structures.
- 13-306. When public officer may repair, etc.
- 13-307. When public officer may remove or demolish.
- 13-308. Lien for expenses; sale of salvaged materials; other powers not limited.
- 13-309. Basis for a finding of unfitness.
- 13-310. Service of complaints or orders.
- 13-311. Enjoining enforcement of orders/exclusive remedy.
- 13-312. Additional powers of public officer.
- 13-313. Appeal to better property board.
- 13-314. Powers conferred are supplemental.
- 13-315. Structures unfit for human habitation deemed unlawful.
- 13-316. Renting unfit or dangerous property declared unlawful.
- 13-317. Severability.
- 13-318. Violations/penalty.

**13-301. Findings of board.** Pursuant to Tennessee Code Annotated, § 13-21-101, et seq., the board of mayor and aldermen finds that there exist or may in the future exist in the city structures which are unfit for human occupation due to dilapidation, defects increasing the hazards of fire, accident or other calamities, accumulation of debris, 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. (as added by Ord. #2010-09, May 2010)

**13-302. Definitions.** (1) "Better property board." For purposes of this chapter 3 shall mean the Board of Adjustment and Appeals for the Elimination of Unsafe Structures of the City of Millington.

(2) "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.

(3) "Governing body" shall mean the board of mayor and aldermen of the city.

(4) "Municipality" or "city" shall mean the City of Millington, Tennessee, and the areas encompassed within existing city limits or as hereafter annexed.

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

(6) "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.

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

(8) "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 the State of Tennessee relating to health, fire, building regulations, or other activities concerning structures located within the city.

(9) "Public officer" means any officer or officers of the city, or the executive director or other chief executive officer of any commission or authority established by the city or jointly with any other municipality, who is authorized by this chapter to exercise the power prescribed herein and pursuant to Tennessee Code Annotated, § 13-21-101, et seq.

(10) "Structure" means any dwelling or place of public accommodation or vacant building or structure suitable as a dwelling or place of public accommodation. (as added by Ord. #2010-09, May 2010)

**13-303. "Public officer" designated; powers.** There is hereby designated and appointed a "public officer," who shall be any one of the following: the director of planning and economic development, the city engineer or the building official of the city, or such other person as may be appointed by the board of mayor and aldermen, to exercise the powers prescribed by this chapter, which powers shall be supplemental to all others held by the director of economic development and planning, the building official and codes enforcement officer. (as added by Ord. #2010-09, May 2010)

**13-304. 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. 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. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer. (as added by Ord. #2010-09, May 2010)

**13-305. 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 and removal of accumulated debris 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 and remove accumulated debris 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. (as added by Ord. #2010-09, May 2010)

**13-306. 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, or to remove accumulated debris, the public officer may cause accumulated debris to be removed, or 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." (as added by Ord. #2010-09, May 2010)

**13-307. 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. (as added by Ord. #2010-09, May 2010)

**13-308. Lien for expenses; sale of salvaged materials; other powers not limited.** (1) The amount of the cost of such removal of debris, repairs, alterations or improvements, or vacating and closing, or removal or demolition by the public officer, 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 property in favor of the city, second only to liens of the state, county and city for taxes, any lien of the city 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 as set forth in Tennessee Code Annotated, §§ 67-5-2010 and 67-5-2410.

(2) 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, the public officer 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 Shelby 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 to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise. (as added by Ord. #2010-09, May 2010)

**13-309. Basis for a finding of unfitness.** The public officer defined herein shall have the power to, and may determine that a structure is 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 which render such structure unsafe or unsanitary or dangerous or detrimental to the health, safety or morals, or otherwise inimical to the welfare of the residents of the city. (as added by Ord. #2010-09, May 2010)

**13-310. 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 Shelby County, Tennessee, and such filing shall have the same force and effect as other lis pendens notices provided by law. (as added by Ord. #2010-09, May 2010)

**13-311. Enjoining enforcement of orders/exclusive remedy.**

(1) Any person affected by an order issued by the public officer or the better property board served pursuant to this chapter may file suit in Shelby County Chancery Court for an injunction restraining the public officer or better property board 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 such suit must be filed in chancery court within sixty (60) days after the posting and service of the order of the public officer or the better property board. If no suit is filed in chancery court by such time, the public officer or better property board shall be entitled to alter, repair, improve, remove, vacate or demolish the structure as provided in the order.

(2) The remedy provided herein shall be the exclusive remedy, and no person affected by an order of the public officer or the better property board shall be entitled to recover any damages for action taken pursuant to any order of the public officer or better property board, or because of noncompliance by such person with any such order. (as added by Ord. #2010-09, May 2010)

**13-312. Additional powers of public officer.** The public officer, in order to carry out and effectuate the purposes and provisions of this chapter, shall still have the following powers in addition to those otherwise granted therein:

(1) To investigate conditions of the structures in the city in order to determine which structures 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;

(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. (as added by Ord. #2010-09, May 2010)

**13-313. Appeal to better property board.** (1) Any owner or party in interest who receives an order from the public officer as described in § 13-305 shall have the right to appeal the public officer's order to the better property

board, provided a notice of appeal is delivered to the public officer within ten (10) days after the date of service of the order. The better property board shall notify the public officer, the owner and the parties in interest of the date, time and place of the hearing before the better property board, which hearing shall be held within twenty (20) days of the date of the notice. At such hearing, the public officer, the owner and each party in interest shall have the right to appear in person or otherwise, give testimony and present evidence. The rules of evidence prevailing in courts of law or equity shall not be controlling in such hearings, but the better property board must be satisfied by the clear preponderance of creditable evidence as to the facts.

(2) If after the hearing of the appeal the better property board upholds the order of the public officer, it shall state in writing its determination to that effect and its findings of fact in support of such determination and shall caused to be served upon the owner and parties in interest the following:

(a) An order requiring the owner within the time specified in the order to repair, alter, clear debris from or otherwise improve the property to render it fit or safe, or to temporarily vacate the property and close any buildings thereon during the repair, alteration or improvement process; or

(b) An order requiring the owner within the time specified in the order to permanently vacate the property and remove or demolish any buildings thereon if the repair, alteration or improvement of such property cannot be made at a reasonable cost (fifty percent [50%] or more of the value) in relation to the value of the property.

(3) If the owner or other parties in interest fail to comply with an order of the better property board within the time stated in the order, the provisions of §§ 13-306, 13-307 and 13-308 shall apply.

(4) If any owner fails to appeal to the better property board within the time provided in this § 13-313, the order of the public officer shall be final, subject to the owner's rights under § 13-311. (as added by Ord. #2010-09, May 2010)

**13-314. 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. (as added by Ord. #2010-09, May 2010)

**13-315. Structures unfit for human habitation 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 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. (as added by Ord. #2010-09, May 2010)

**13-316. Renting unfit or dangerous property declared unlawful.**

It shall be unlawful for any owner or any party in interest of real property to rent or offer for rent any real property that is unfit or dangerous due to dilapidation, defects that increase hazards of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or due to other conditions that render such property unsafe, unsanitary or dangerous and detrimental to the health, safety or morals or otherwise inimical to the welfare of residents of the city. (as added by Ord. #2010-09, May 2010)

**13-317. Severability.** The provisions of this chapter are declared to be severable. If any provision of this chapter should be declared by a court of competent jurisdiction to be invalid or unenforceable, the portions of this chapter not so declared shall continue in full force and effect. (as added by Ord. #2010-09, May 2010)

**13-318. Violations/penalty.** Violation of this chapter shall subject the offender to a penalty of fifty dollars (\$50.00), which shall be in addition to any costs for which the offender is liable under this chapter. Each day that a violation exists after the date of service by the public officer of an order described in § 13-305 shall constitute a separate offense, provided that such order is either not appealed to, or is upheld on appeal by, the better property board. (as added by Ord. #2010-09, May 2010)