

City of Winchester
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 Winchester Municipal code. The city has also adopted the provisions of the State's Slum Clearance law by ordinance. The city may use the provisions of TCA 6-54-113 for the enforcement of property maintenance codes.

General

The city's 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 of 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.

- Approximately 80 % of the city's cost for mowing tall grass and weeds by the public works department is uncollectible.
- Slum clearance provisions adopted by the council 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 council 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 Council

The city council should develop and adopt property maintenance standards, including policies, rules, regulations, procedures, penalties, and allow the public officer (building inspector) and the courts to function. Just as the council does not conduct a hearing when a police officer issues a citation for speeding, it is not necessary for the council to conduct a hearing for a property maintenance citation. The violator has the option to appeal a decision of the public officer to the appropriate court before an impartial judge.

The council should convey to the city administrator 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 council should decide and convey this to the city administrator prior to any enforcement inspections and actions.

Many councils 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. Council 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 council has adopted. When the public officer perceives that the council 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 a monthly report with the city administrator (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 building official 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 inspector 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 council is required to enforce the council's property maintenance standards. The inspector should review the cost of alterations, repairs, and demolition of property with the city administrator 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 as well as a procedure for releasing the liens. 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 adopted by ordinance, to enforce regulations relating to dilapidated properties.
10. The city attorney should provide legal advice to the city administrator relating to code enforcement issues, represent the city in court initiated actions, and defend the city's interest when required. Only the city administrator 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 building official on dilapidated structure inspections. 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 these 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 Franklin 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)

- a. If determined by the city's inspector that any owner of record of real property has created, maintained or permitted to be maintained on such property the growth of

- trees, vines, grass, underbrush or the accumulation of debris, trash, litter, or garbage, or any combination of the above, so as to endanger the health, safety or welfare of other citizens or to encourage the infestation of rats and other harmful animals, the inspector shall provide notice to the owner of record to remedy the condition immediately.
- b. The notice shall be given by United States mail, addressed to the last known address of the owner of record.
 - c. 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 council. Such hearings only slow down the enforcement efforts. The hearing procedure is outlined in the above referenced state code).
 - d. 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.
 - e. 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 council to cause the condition to be remedied or removed.
 - f. Public works 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.
 - g. 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 has adopted 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, that:
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; and
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; or
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 Franklin 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 building inspector and fire inspector as special police officers 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) Council advises the administrator as to the aggressive nature of the inspection and enforcement program.
- (7) Review MTAS recommendations with the city attorney.

(Exhibit 1)

Ordinance No. _____

An Ordinance Providing Property Maintenance Standards

Be It Ordained by the City of Winchester 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 be 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 council, and the plat of which is recorded with the register of deeds, or in a subdivision developed prior to the creation of the planning council, 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 be 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 council or allowed by state law.

Section 10. This ordinance becomes effective immediately upon passage by the city council 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 BUILDING OFFICIAL AS A SPECIAL POLICE OFFICER FOR BUILDING AND PROPERTY MAINTENANCE ENFORCEMENT

Whereas, the building official of the City of Winchester is charged with enforcement of the various building and property maintenance codes of the city, and

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

Whereas, the city desires that the building official have the authority to cite offenders to city court;

Therefore, Be It Resolved by the City Council of the City of Winchester, Tennessee as follows:

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

Section 2. The building 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 building 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.

This Resolution passed this _____ day of _____, 2010.

Mayor

Attest: City Recorder

(Exhibit 3)

Monthly Property Maintenance Report to the City Administrator

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
JUDGMENT **City of** _____

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

(City)

Personally appeared before me, _____,

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