

ORDINANCE 2011-7

AN ORDINANCE TO AMEND THE MILLINGTON MUNICIPAL CODE, TITLE 13, BY DELETING EXISTING SECTION'S 13-105 AND 13-106 AND REPLACING THEM WITH NEW PROVISIONS REGARDING REMOVAL OF VEGETATION AND DEBRIS FROM OVERGROWN AND DIRTY LOTS AND PENALTIES FOR VIOLATION

WHEREAS, Title 13 of the Millington Municipal Code establishes rules regarding property maintenance; and

WHEREAS, *Tennessee Code Annotated*, § 6-54-113 grants municipalities the right to require owners to keep their property free of growth of trees, vines, grass, underbrush, flowers, plants or any landscaping material and/or the accumulation of debris, trash, litter, or garbage or any combination of the preceding elements that would endanger the health, safety or welfare of other citizens, or encourage the infestation of insects, reptiles, rats and other harmful animals; and

WHEREAS, the Board of Mayor and Aldermen of the City of Millington wishes to exercise its rights granted under *Tennessee Code Annotated* § 6-54-113 and to set guidelines for enforcement; and

WHEREAS, the Board of Mayor and Aldermen desires to require lessees of real property to keep their property free of excessive growth of trees, vines, grass, underbrush, flowers, plants or any landscaping material and/or the accumulation of debris, trash, litter, or garbage or any combination of the preceding elements that would endanger the health, safety or welfare of other citizens, or encourage the infestation of insects, reptiles, rats and other harmful animals;

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF MILLINGTON, TENNESSEE, as follows

SECTION 1. Sections 13-105 and 13-106 of the Millington Municipal Code are deleted in their entirety and replaced by the following new sections:

“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 (10) inches in height on occupied property and that exceeds eighteen (18) inches in height on unoccupied property, whether residential or commercial, and 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 Section 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 first class U.S. 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 and shall be posted on the property. Mailed notice shall be presumed to have been delivered on the third day after such notice is deposited in the U.S. mail. 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 action for debt against more than one 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 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 ordinance 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.

Approved on third reading on May 7, 2012

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 Section 13-105 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 Section 13-105, any property owner who violates this ordinance may be cited to City Court, and shall be subject to a civil penalty of \$ 50.00 plus court costs for each separate violation of this ordinance. 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.

SECTION 2. The following new section is added to the Millington Municipal Code as Section 13-106:

“13-106. Overgrown and Dirty Lots/Lesseees.

(1) Prohibition. It shall also be unlawful, to the same extent set out in Section 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 (10) inches in height on occupied property and that exceeds eighteen (18) inches in height on unoccupied property, whether residential or commercial, and shall be deemed to violate this Section.

(2) Designation of public officer or department. Unless otherwise designated, this Section 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 Section 13-106 (1) a written notice in plain language to remedy the condition within ten (10) days; provided, however, that 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 notice period shall be twenty (20) days, excluding Saturdays, Sundays and legal holidays. The notice shall be sent by first class U.S. 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 and shall be posted on the property. Mailed notice shall be presumed to have been delivered on the third day after such notice is deposited in the U.S. mail. 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 stating 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

Approved on third reading on May 7, 2012

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 Section 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 Section 13-105.

(5) Violations/Penalty. In addition to the liability for costs of remedy or removal of any condition described in this Section 13-106, any lessee of real property who violates this ordinance shall be subject to citation to City Court and to a civil penalty of \$ 50.00 plus court costs for each separate violation of this ordinance. Each day the violation continues after delivery of written notice to the lessee in accordance with this Section shall be considered a separate violation.”

SECTION 3. Severability. Each section, subsection, paragraph, sentence and clause of this ordinance is declared to be separable and severable. The invalidity of any section, subsection, paragraph, sentence or clause shall not affect the validity of any other provision of the ordinance.

SECTION 4. Repeal. All ordinances and parts of ordinances which are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

This Ordinance shall take upon its final adoption, the public welfare requiring it.

Adopted this 7th day of May, 2012.

Linda L. Carter, Mayor

Carolyn K. Conley, City Clerk

First reading: September 6, 2011
Second reading: October 3, 2011
Third reading: May 7, 2012