

Substitute Ordinance No.5788

SUBSTITUTE ORDINANCE TO AMEND THE CITY OF MEMPHIS CODE OF ORDINANCES CHAPTER 15 "GARBAGE, TRASH, REFUSE AND SOLID WASTE" ARTICLE I, DIVISION 4 "DISPOSAL AND REMOVAL OF PERSONAL PROPERTY" REGARDING LANDLORDS OR PROPERTY OWNERS

WHEREAS, it is the desire of the Memphis City Council to take action to reduce the amount of illegal dumping in the City of Memphis in order to help improve blight that is present in City neighborhoods on public property, sidewalks, vacant lots, and abandoned properties.

WHEREAS, the improper placement of an evicted person's personal property on sidewalks, streets, utility easements and public rights of way following an eviction, also known as an eviction set-out, contributes to blight and the propagation of illegal dumping.

WHEREAS. It is necessary to amend certain sections of the Memphis City Code that were enacted by Ordinance No. 5705 on September 25, 2018.

NOW, THEREFORE BE IT ORDAINED by the Memphis City Council that

Section 1. Chapter 15, Article 1, Division 4 "**DISPOSAL AND REMOVAL OF PERSONAL PROPERTY**" of the Official Memphis Code of Ordinances ("City Code"), also referenced in the unofficial republication of City Ordinances by Municipal Code Corporation ("MuniCode") as Title 9, Chapter 9- 56, Article I, Division 4 titled "**DISPOSAL AND REMOVAL OF PERSONAL PROPERTY**" is hereby amended as follows:

DIVISION 4 DISPOSAL AND REMOVAL OF PERSONAL PROPERTY

Sections 15-30, 15-31, 15-32 and 15-33 of the City Code and corresponding MuniCode Sections 9-56-30, 9-56-31, 9-56-32 and 9-56-33 shall be deleted in their entirety and substituted with new sections 15-30 [9-56-30], 15-31 [9-56-31] and 15-32 [9-56-32], which shall read as follows:

Section 15-30 [9-56-30] Disposition of abandoned property following an eviction.

In accordance with state law a landlord or property owner is prohibited from disturbing a tenant's personal property for forty-eight (48) hours after the entry of a judgment for possession in favor of the landlord or property owner. After such forty-eight (48) hour period, a landlord or property owner or their designated representative(s) may discard the personal property remaining in the premises, only by placing such personal property:

- A. On the premises from which the defendant or tenant is being removed;
- B. In an appropriate area clear of the entrance to the premises; and
- C. At a reasonable distance from any sidewalk, street, utility easement, public right of way or public property appurtenant to the premises.

Under no circumstances may eviction belongings, abandoned or otherwise, be placed on a sidewalk, street, utility easement or public right of way or on any public property appurtenant to the premises or otherwise.

Eviction belongings, abandoned or otherwise shall not be allowed to remain on the premises for which a judgment for possession was entered for more than seventy-two hours after placement on the premises from which the defendant or tenant is being removed. Continued placement of such property after the expiration of the seventy-two (72) hour period shall constitute a public nuisance that is injurious to the health, safety and public welfare and the City may avail itself of all or any legal remedies to abate such nuisances, including but not limited to (i) injunctive relief, (ii) self-help removal of the property; (iii) imposition of a lien and recovery of the City's costs in effecting such self-help removal or (iv) pursuit of all remedies available under this Code of Ordinances or state law.

Sec.15-31 [9-56-31]. - Violations for failure to remove and dispose of personal property discarded onto City right-of-way.

- A. *Violations.* Any landlord, property owner, or person who violates this ordinance, where applicable, shall be issued a misdemeanor citation in accordance with Article II of this chapter and assessed a civil penalty equal to the actual costs incurred by the City for the removal and disposal of such property. Each day that the discarded property remains in a City right-of-way, easement, or on property owned or maintained by the City in violation of this section shall constitute a separate offense punishable up to \$50.00, plus costs, per offense.
- B. *Offense of criminal littering.* Criminal littering is littering in an amount more than five pounds (5 lbs.) in weight or seven and one half (7.5) cubic feet in volume and less than or equal to ten pounds (10 lbs.) in weight or fifteen (15) cubic feet in volume.
- C. Criminal littering is a Class B misdemeanor punishable by no more than (six) 6 months imprisonment, a fine not to exceed five hundred dollars (\$500), or both, unless otherwise provided by statute in accordance with TCA § 40-35-111.
- D. In addition to the penalties established in this section, the court, to the extent authorized by applicable law, shall require a person convicted under this section to remove litter from the state or local highway system, public playgrounds, public parks or other appropriate public locations for not more than eighty (80) hours. The court, in its discretion, may also require a person convicted under this section to work in a recycling center or other appropriate location for any stated period of time not to exceed eight (8) hours.

Section 15-32 [9-56-32]. Disposal and removal by City.

- A. In addition to the penalties set forth in section 15-31 [9-56-31], upon failure of any landlord or property owner to discard and remove such property in the manner set forth in section 15-30 [9-56-30], the solid waste division is hereby authorized and directed to have such property removed and disposed, and to provide a statement of costs to the director of finance or his designee. A lien is hereby declared on such property for all costs and expenses incurred by the city provided that, such costs and expenses shall not exceed the amounts set forth in subsection 15-31. A. [9-56-31.A] together with a reasonable attorney's fee if the City is required to institute suit to enforce this ordinance or to exercise its rights to enforce the lien. .
- B. Upon receipt of the statement of costs of disposal and removal by the city, the director of finance or his designee may transmit a true copy thereof to the city attorney, who

shall forthwith institute suit or take such other action as may be necessary to enforce the lien on such property.

C. All uncollected costs for the current year shall be certified to the city treasurer on or before December 31 of each year. It shall be the duty of the city treasurer to collect, as a special tax, the amount so certified at the time city taxes levied against the property for which the disposal and removal was performed for the next succeeding year are collected. The cost of disposal and removal pursuant to this section is hereby declared to be a special tax to be collected as general taxes levied by the city

Section 15-34 [9-56-34] shall be renumbered 15-33 [9-56-33].

Sections 15-34 [9-56-34]—15-40 [9-56-40] shall be reserved.

Section 2. Inconsistency. All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed and this ordinance shall supersede and replace any ordinances of the City to the extent that such ordinances are inconsistent with the provisions of this ordinance.

Section 3. Severability. The provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases, or parts are held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

Section 4. Effective Date. This Ordinance shall take effect from and after the date it shall have been passed by the Council, signed by the Chairman of the Council, certified and delivered to the Office of Mayor in writing by the comptroller and become effective as otherwise provided by law.

Sponsor
JB Smiley, Jr.

Chairman
Frank Colvett, Jr.