

MEMO

To: Madison County Board of Supervisors
From: Brad Sellers
Subject: Nettie Ruth Winston Travis
Date: May 28, 2013

Pursuant to code section § 19-5-105, Cleaning of Private Property, if notice cannot be provided by certified mail, notice may be given by publication in a newspaper of general circulation.

MEMO

To: Madison County Board of Supervisors
From: Brad Sellers
Subject: § 19-5-105 - Cleaning of Property
Date: May 29, 2013

The 2012 Legislature changed certain elements of Code Section 19-5-105, Cleaning of Property, that will require adjustments in our notification to properties in need of cleaning. The pertinent changes are as follows:

In order for the P&Z Department to inspect and report the condition of property that may be need cleaning:

- a. The Board of Supervisors is empowered to conduct a hearing on its own motion, or
- b. Upon receipt of a petition by a majority of residents, 18 years or older, residing within a reasonable proximity of the subject property, or within 750 feet of the precise location of the alleged menace, situated on any parcel of land which is located in a populated area or in a housing subdivision.

Notice must be given by U.S. Mail two weeks before the date of the hearing, and by posting notice two weeks before the date of the hearing on the property and the county courthouse.

Costs to the county may be adjudicated, and a penalty not to exceed \$1,500.00, or 50% of the cleaning cost may also be assessed.

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10 Am. Jur. Trials, Obscenity
§ 1 et seq.

§ 19-5-104. Regulation of establishments where public displays of nudity are present.

(1) In accordance with the provisions of Section 19-3-41, providing that additional powers may be conferred upon the board of supervisors of any county, the board of supervisors of any county are hereby empowered to promulgate, adopt and enforce ordinances which are necessary and reasonable for the regulation of establishments where public displays of nudity are present.

(2) For the purposes of this section the terms "nudity" and "public display" shall have the same meanings as those terms are defined in Section 19-5-103.

(3) Ordinances adopted pursuant to this section shall comport with the elements of due process and shall include, but not be limited to, specificity, adequate notice, right to hearing, right to counsel, right to appeal adverse findings to a judicial authority and penalties rationally related to prohibited acts.

(4) Boards of supervisors proposing such ordinances shall publish and post notice of such intentions not less than twenty (20) days prior to the holding of a public hearing whereat the purposes and substance of such ordinances shall be fully discussed.

SOURCES: Laws, 2010, ch. 355, § 1, eff from and after July 1, 2010.

Cross References — Regulation of massage parlors and public displays of nudity, see § 19-5-103.

§ 19-5-105. Cleaning private property; notice to property owner; hearing; lien.

To determine whether property or a parcel of land located within a county is in such a state of uncleanness as to be a menace to the public health, safety and welfare of the community, the board of supervisors of any county is authorized and empowered to conduct a hearing on its own motion, or upon the receipt of a petition requesting the board of supervisors to act signed by a majority of the residents eighteen (18) years of age or older, residing upon any street or alley, within reasonable proximity of any property alleged to be in need of cleaning, or within seven hundred fifty (750) feet of the precise location of the alleged menace situated on any parcel of land which is located in a populated area or in a housing subdivision and alleged to be in need of cleaning.

Notice shall be provided to the property owner by:

(a) United States mail two (2) weeks before the date of the hearing mailed to the address of the subject property and to the address where the ad valorem tax notice for such property is sent by the office charged with collecting ad valorem tax; and

(b) Posting notice for at least two (2) weeks before the date of a hearing on the property or parcel of land alleged to be in need of cleaning and at the

county courthouse or another place in the county where such notices are posted.

The notice required by this section shall include language that informs the property owner that an adjudication at the hearing that the property or parcel of land is in need of cleaning will authorize the board of supervisors to reenter the property or parcel of land for a period of one (1) year after the hearing without any further hearing, if notice is posted on the property or parcel of land and at the county courthouse or another place in the county where such notices are generally posted at least seven (7) days before the property or parcel of land is reentered for cleaning. A copy of the required notice mailed and posted as required by this section shall be recorded in the minutes of the board of supervisors in conjunction with the hearing required by this section.

If at such hearing the board of supervisors shall in its resolution adjudicate such parcel of land in its then condition to be a menace to the public health and safety of the community, the board of supervisors may, if the owner not do so himself, proceed to have the land cleaned by cutting weeds, filling cisterns, and removing rubbish, dilapidated fences, outside toilets, dilapidated buildings and other debris, and draining cesspools and standing water. Thereafter, the board of supervisors may at its next regular meeting by resolution adjudicate the actual cost of cleaning the land and may also impose a penalty not to exceed One Thousand Five Hundred Dollars (\$1,500.00) or fifty percent (50%) of the actual cost, whichever is more. The cost and any penalty shall become an assessment against the property. The "cost assessed against the property" means either the cost to the county of using its own employees to do the work or the cost to the county of any contract executed by the county to have the work done, and administrative costs and legal costs of the county.

A county may reenter the property or parcel of land to maintain cleanliness without further notice of hearing no more than six (6) times in any twelve-month period with respect to removing dilapidated buildings, dilapidated fences and outside toilets, and no more than twelve (12) times in any twenty-four-month period with respect to cutting grass and weeds and removing rubbish, personal property and other debris on the land. The expense of cleaning the property shall not exceed an aggregate amount of Twenty Thousand Dollars (\$20,000.00) per year, or the fair market value of the property subsequent to cleaning, whichever is less. The board of supervisors may assess the same penalty each time the property or land is cleaned as otherwise provided in this section.

The penalty provided herein shall not be assessed against the State of Mississippi upon request for reimbursement under Section 29-1-145, nor shall a county clean a parcel owned by the State of Mississippi without first giving notice.

The assessment authorized by this section shall be a lien against the property and may be enrolled in the office of the circuit clerk of the county as other judgments are enrolled, and the tax collector of the county shall, upon order of the board of supervisors, proceed to sell the land to satisfy the lien as now provided by law for the sale of lands for delinquent taxes. Furthermore,

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the property owner whose land has been sold pursuant to this section shall have the same right of redemption as now provided by law for the sale of lands for delinquent taxes. All decisions rendered under the provisions of this section may be appealed in the same manner as other appeals from county boards.

SOURCES: Laws, 1983, ch. 459; Laws, 1996, ch. 332, § 1; Laws, 2012, ch. 366, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment rewrote the section.

Cross References — Municipal power as to cleaning of private property, see § 21-19-11.

ATTORNEY GENERAL OPINIONS

The authority granted the county by Section 19-5-105 may be exercised only in the areas of the county which are not within the corporate limits of a municipality. Smith, October 18, 1995, A.G. Op. #95-0696.

Notice must be given according to the terms of Section 19-5-105, personal service would not suffice. Walters, October 4, 1996, A.G. Op. #96-0635.

For the abatement of public health nuisances, a county may proceed under this section or notify the state board of health of the nuisance pursuant to § 41-23-13, and the county may consider passing an ordinance pursuant to § 19-5-9, which allows for the adoption of codes dealing with general public health, safety or welfare. Fillingane, Oct. 25, 2002, A.G. Op. #02-0586.

This section is sufficient authority for a county to remove inoperable, junk vehicles under the circumstances proscribed in the section, and where the county has found that same constitutes a menace to the public health and safety. Shaw, July 7, 2003, A.G. Op. 03-0298.

If registered mail sent to the property owner pursuant to Miss. Code Ann. § 19-5-105, which requires service on the property owner by registered mail, return receipt requested, receipted by addressee only, is refused by the addressee, and is marked by the Postal Service as "Refused" as described in Miss. R. Civ. P. 4(f), then such notice satisfies the service requirements of Miss. Code Ann. § 19-5-105. Meadows, February 2, 2007, A.G. Op. #07-00012, 2007 Miss. AG LEXIS 8.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and other Political Subdivisions §§ 398, 400-403, 406, 407.

LOCAL GOVERNMENT SOLID WASTE COLLECTION AND DISPOSAL ASSISTANCE ACT OF 1994

SEC.

19-5-107.

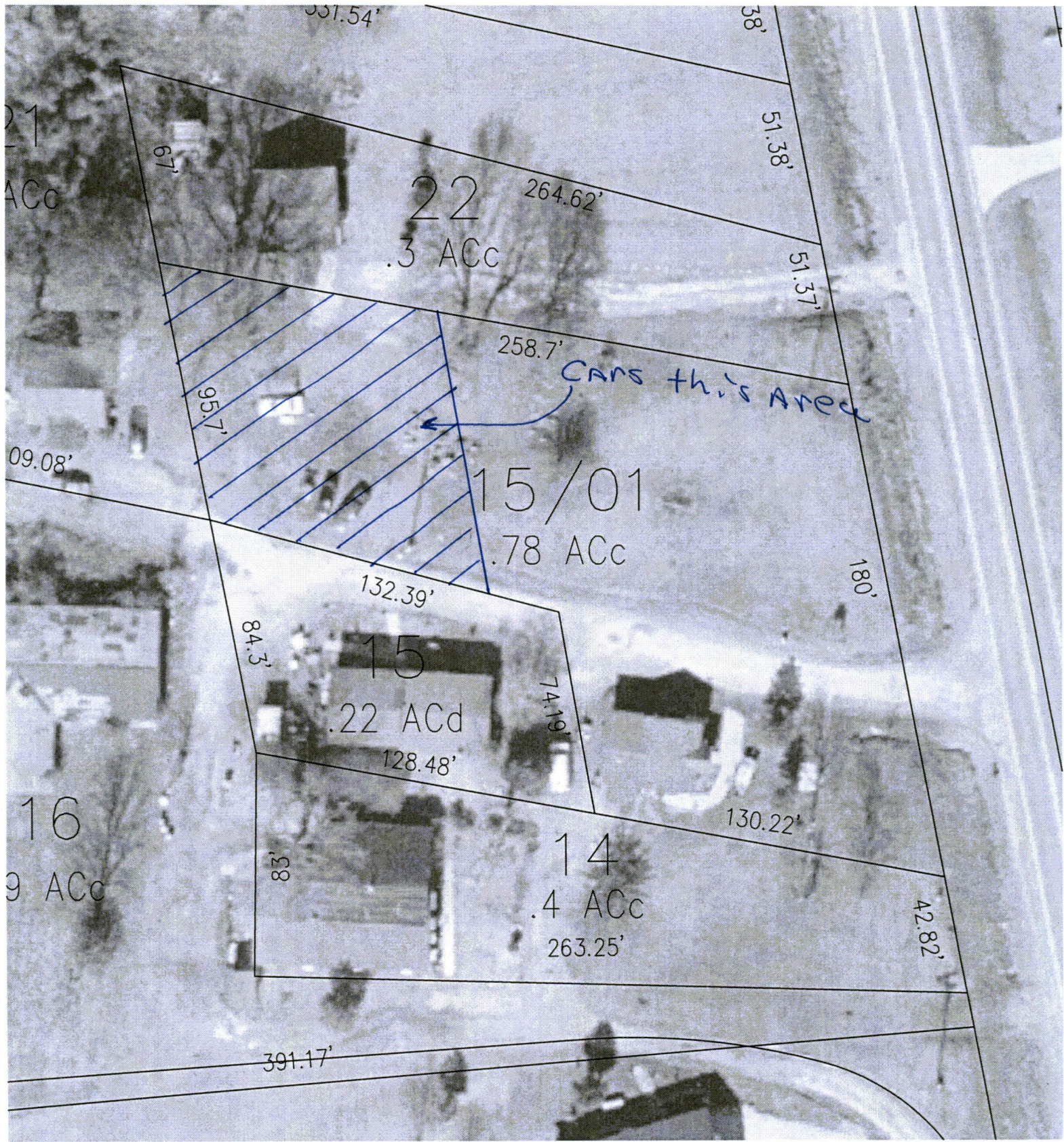
19-5-109.

Short title; purpose.

Estimation of cost of garbage collection and disposal services; means of meeting costs; effect on contracts.

§ 19-5-107. Short title; purpose.

This act [Laws, 1994, ch. 624] shall be known as the "Local Government Solid Waste Collection and Disposal Assistance Act of 1994" and is in response to concerns expressed by the Mississippi Municipal Association, the Missis-



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22

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