

RESOLUTION: 22
RESOLUTION TITLE: Resolution Adopting Fill Material Transportation Regulations
DATE: September 21, 2020
MOTION BY: Mr. Walter Weakley
SECONDED BY: Mr. Tim Williamson

**CERTIFIED COPY
CHEATHAM COUNTY CLERK**

COMPLETED RESOLUTION:

BE IT THEREFORE RESOLVED, That the Cheatham County Legislative Body meeting in Regular Session this the 21st day of September 2020 in the General Sessions Courtroom at the Courthouse in Ashland City, Tennessee, WHEREAS, Cheatham County has become a significant destination for the deposit of dirt, rock, and other fill material removed from other locations; and

Whereas, heavy truck traffic transporting such dirt, rock, and other fill material across Cheatham County roads has increased significantly; and

Whereas, the volume of heavy truck traffic transporting such material has the cumulative effect of causing significant damage to roads maintained by Cheatham County; and

Whereas, in order to prevent additional damage to public roads maintained by Cheatham County it is necessary to adopt regulations governing the transportation of dirt, rock, and other fill material across Cheatham County roads; and

Whereas Tennessee Code Annotated § 5-1-118 provides counties in Tennessee share with municipalities the power to define, prohibit, abate, suppress, prevent and regulate all acts, practices, conduct, business and all other things whatsoever detrimental, or liable to be detrimental, to the health, morals, comfort, safety, convenience or welfare of its inhabitants; and

Whereas, Tennessee Code Annotated § 5-1-118 further provides counties in Tennessee share with municipalities the power to prescribe limits within which business occupations and practices liable to be nuisances or detrimental to the health, morals, security or general welfare of the people may lawfully be established, conducted or maintained.

BE IT THEREFORE RESOLVED, That the Cheatham County Legislative Body meeting in Regular Session on this the 21st day of September, 2020 as follows:

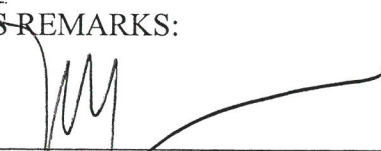
1. The Cheatham County Legislative Body hereby finds that the unregulated transportation of fill material across County Roads is detrimental, or liable to be detrimental to the health, comfort, safety, convenience or welfare of the inhabitants of Cheatham County.
2. The Cheatham County Legislative Body hereby finds that the transportation of fill material across County Roads is a business practice liable to be a nuisance or detrimental to the health, security or general welfare of the people of Cheatham County.

3. Based on the foregoing findings and by a two-thirds majority vote, the Cheatham County Legislative Body adopts the Fill Material Transportation Regulations attached hereto as Exhibit A.
4. This resolution shall take effect upon adoption, the public welfare requiring it.

RECORD: Approved by roll call vote 12 Yes 0 No 0 Absent

David Anderson	Yes	Donnie Jordan	Yes
Gary Binkley	Yes	Walter Weakley	Yes
Ann Jarreau	Yes	Diana Pike Lovell	Yes
Tim Williamson	Yes	Eugene O. Evans, Sr.	Yes
Chris Gilmore	Yes	Ed Greer	Yes
Connie Mayo	Yes	Randy Liles	Yes

CHEATHAM COUNTY MAYOR'S REMARKS:

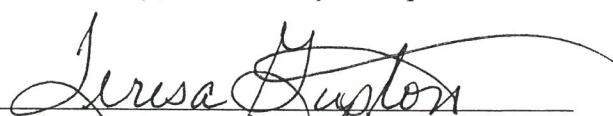


 Kerry McCarver, County Mayor

CHEATHAM COUNTY CLERK'S ACKNOWLEDGMENT: _____

I, Teresa Gupton, do hereby certify that I am the duly authorized and acting County Clerk of Cheatham County, Tennessee. And as such official, I further certify that this resolution was duly passed in open court and offered for signature to the Honorable Kerry McCarver, County Mayor; that this resolution was promptly and fully recorded and is open to public inspection.

Witness, My official signature and seal of said county, this 25th day of September 2020.



 Teresa Gupton, County Clerk



Exhibit A

Fill Material Transportation Regulations

I. Findings

- A. The Cheatham County Legislative Body hereby finds that the unregulated transportation of fill material across County Roads is detrimental, or liable to be detrimental to the health, comfort, safety, convenience, or welfare of the inhabitants of Cheatham County.
- B. The Cheatham County Legislative Body hereby finds that the transportation of fill material across County Roads is a business practice liable to be a nuisance or detrimental to the health, security, or general welfare of the people of Cheatham County.

II. Definitions

- A. "County Road" means all parts of roadways maintained by Cheatham County and includes any ditch, slope, berm, bridge, culvert, overpass, tunnel, barricade, fence, wall, traffic control device, sign, marker, and any other structure or physical feature erected upon or maintained within or adjacent to the county right-of-way.
- B. "Superintendent" means the Cheatham County Superintendent of Roads or his designee.
- C. "Fill Operations" means the removal of soil, rock, and other materials from one location and the deposit of such materials at a different location for the purpose of, or having the effect of, changing the elevation of the existing land at the deposit site.
- D. "Fill Material" means the material transported between locations when conducting Fill Operations.

III. Permit

- A. No person or entity shall transport Fill Material across County Roads without first obtaining a Fill Transportation Permit issued by the Superintendent unless specifically exempted from obtaining a permit as specified herein.
- B. No permit shall be required for the transportation of ten (10) or fewer loads of Fill Material to a single site within a one hundred eighty (180) day period. Contiguous

property shall be deemed to be a single site regardless of the number of parcels or owners.

- C. Permits shall be valid for the time required to complete Fill Operations not to exceed one-hundred eighty (180) days. Permits may be renewed in the same manner as the permit was originally obtained including the payment of a new application fee.
- D. Permit holders shall keep records detailing the number of loads transported, the date each load was transported, and the operator of the vehicles transporting the loads. Such records shall be provided within five (5) days upon the request of the Superintendent.
- E. Permit holders shall be required to maintain proper drainage of County Roads and shall not create or maintain any impediment to drainage in the County right of way.
- F. Permit holders shall report any new damage on the route covered by the permit to Superintendent of Roads.
- G. Permit holders shall notify the Superintendent in writing when Fill Operations are complete and such notification shall terminate the permit. Upon receipt of notification of the completion of Fill Operations, the Superintendent shall conduct an evaluation to determine if any damage to County Roads has occurred.
- H. Any person or entity violating the terms of the resolution shall be subject to a penalty in the amount of fifty (\$50) dollars per violation with each load of Fill Material transported without the required permit constituting a separate violation.
- I. The Superintendent may immediately suspend or revoke a permit for violations of these regulations, if the route being used for Fill Operations becomes unsafe, or if the route is likely to become unsafe if Fill Operations continue.
- J. The Superintendent may temporarily suspend a permit if weather or environmental conditions make any portion of the approved route more susceptible to damage.
- K. The Superintendent may suspend a permit if the Fill Operations result in damage to County Roads until such damage has been repaired to applicable County standards at the expense of the permit holder.
- L. The Superintendent may suspend a permit if the Fill Operations result in the accumulation of soil, rock, or debris on County Roads until such has been removed at the applicant's expense and reasonable measures have been adopted to prevent a recurrence.

- M. Nothing in this resolution shall be deemed to relieve any person or entity of liability for damaging County Roads regardless of whether a permit has been issued or is required.
- N. The regulations set forth herein are supplemental to any other applicable law regarding the regulation of County Roads and the Superintendent may enforce these regulations as well as seeking other legal remedies.
- O. The regulations set forth herein are in addition to applicable County zoning and other regulations and applicants shall be required to comply with all such regulations.

IV. Application, Fees & Costs

- A. The fee for obtaining a Fill Transportation Permit shall be one hundred (\$100) dollars.
- B. Applications shall identify the routes within Cheatham County to be used for the transportation of Fill Material and upon the issuance of a permit, only those routes shall be utilized.
- C. Applications shall identify by name and address all individuals or entities that will be transporting Fill Material in Cheatham County.
- D. Applicants shall provide a written acknowledgment from all individuals or entities transporting Fill Material in Cheatham County of the receipt of a copy of these regulations.
- E. Prior to the issuance of a permit, the Superintendent shall inspect the County Roads identified in the application to evaluate the existing state of repair and document existing damage or substandard conditions. The permit applicant has the option of accompanying the Superintendent during the inspection and requesting that areas of concern be documented.
- F. If evaluation of existing road conditions requires the services of the County's engineer, the applicant will be responsible for such expense.
- G. If the Superintendent determines the proposed route requires repair, maintenance, or upgrades in order for the Fill Operations to be safely conducted or to prevent damage to County Roads, no permit shall be issued until the needed work is completed at the applicant's expense.

V. Bond

- A. Fill Operations that will result in more than fifty (50) round trip vehicle loads or that will last more than thirty (30) days will be required to post sufficient bond to assure that the cost of any damage to County Roads is not borne by Cheatham County. The amount of the bond will be determined in consultation with the County engineer and will take into account the length of the route on County Roads and other relevant factors. A bond may be required for routes that include chipseal roads regardless of the number of vehicle loads and the Superintendent may prohibit the use of routes on chipseal roads for more than fifty (50) loads.
- B. Notwithstanding the number of loads being transported, the Superintendent may revoke a permit until an adequate bond is posted if it is determined that the Fill Operations are causing damage to County Roads.
- C. All bonds shall provide a location within Cheatham County or a neighboring county where the bond may be drawn upon and shall only require Cheatham County to notify the issuer of the bond that liability has been incurred in order to draw on the bond.
- D. Any required bond shall be irrevocable for the term of the permit.
- E. If the Superintendent is required to draw on the bond due to damage to County Roads, the Fill Transportation Permit shall be suspended until the damage is repaired and the Superintendent determines that an adequate bond remains in place.
- F. Bonds will be released only upon the completion of any necessary repairs, payment of all amounts owed by applicant, and a final inspection of the route to determine that any damage has been addressed.

VI. Appeals

- A. Any person aggrieved by a decision of the Superintendent under these regulations may appeal such decision to the Fill Material Transportation Appeals Board.
- B. All requests for appeals shall be in writing and addressed to the Superintendent.
- C. The Fill Transportation Appeals Board shall consist of three (3) members designated by the Superintendent to hear each appeal consisting of one (1) member from the Cheatham County Highway Department not involved in the decision under appeal and two (2) members selected from the Cheatham County Road and Bridge Committee.

- D. Appeals shall be heard and decided within sixty (60) days of the date the appeal except in the case of extraordinary events beyond the control of the parties which prevent the appeal being heard within such time. Appeal hearings or decisions may be extended for a longer period with the consent of the party making the appeal.
- E. Appeal decisions shall be made based on information presented at the appeals hearing. The party requesting the appeal shall submit any documents to be considered by the Fill Transportation Appeals Board to the Superintendent at least five (5) days prior to the hearing. Documents submitted after such time may be excluded from the hearing at the discretion of the Fill Transportation Appeals Board.
- F. Appeals hearings shall be public meetings with adequate public notice given in accordance with applicable law.
- G. Members of the Fill Transportation Appeals Board shall serve without compensation except that employees of the Cheatham County Highway Department will be paid in accordance with applicable law and the Cheatham County Highway Department Personnel Policies.

VII. Other

- A. If any provision or application of these regulations is found to be invalid, illegal, unconstitutional, or unenforceable, that finding shall not affect or undermine the validity of any other provision or application which can be enforced without the use of the offending portion of the legislation.