

ORDINANCE NO. 09-2014

CITY OF DIAMOND CITY, BOONE COUNTY, ARKANSAS

AN ORDINANCE TO AMEND ORDINANCE NO. 10-11 IN ITS ENTIRETY AND TO ESTABLISH THE REGULATION OF UNSIGHTLY AND UNSANITARY CONDITIONS ON REAL PROPERTY LOCATED IN THE CITY OF DIAMOND CITY, ARKANSAS; PROVIDING FOR NOTICE REQUIREMENTS TO LANDOWNERS; PROVIDING FOR ENFORCEMENT THEREOF; IMPOSING A LIEN FOR COSTS INCURRED BY CITY TO MAINTAIN; PROVIDING FOR PENALTIES; DECLARING AN EMERGENCY TO EXIST; AND OTHER PURPOSES.

WHEREAS, on July 18, 2011, the City of Diamond City enacted Ordinance No. 10-11 to regulate grass and weed nuisances, abandoned and inoperable vehicles and other nuisances and to establish procedures for the abatement of the same within the incorporated area of the City of Diamond City, Arkansas; and

WHEREAS, the City Council of the City of Diamond City has determined that there is a need to amend in its entirety the provisions of the Ordinance to more effectively govern the maintenance of real property located within the corporate limits of the City of Diamond City, Arkansas in order to regulate the clearance of unsightly and unsanitary conditions thereon; and

WHEREAS, in order to regulate such unsightly and unsanitary conditions as provided by A.C.A. §14-54-901 through §14-54-904 in order to prevent harm to the health of the community and assure the proper growth and development of the City, the City Council has determined that there is an immediate need for this Ordinance.

NOW THEREFORE, BE IT ENACTED, by the City Council of the City of Diamond City, as follows:

Ordinance No. 10-11 is hereby amended in its entirety to provide as follows:

Section 1. Definitions. The following words, terms, and phrases, when used herein, shall have the meaning ascribed to them in this section:

- (a) “Circuit Court” means the Boone County Circuit Court.
- (b) “Clean up lien” means a lien securing the cost of work undertaken by the City to remove, abate, or eliminate a condition in violation of local codes.
- (c) “Court lien” means a lien securing the fines or penalties imposed by a court of competent jurisdiction against the owner of an unsafe and vacant structure or

weed lot for failure to comply with applicable building codes which have been secured by a court lien by action of the local governing body.

- (d) “Priority clean up lien” means a clean up lien for work undertaken by a city or town on an unsafe and vacant structure or weed lot, that is given priority status over other lienholders following notice and hearing.
- (e) “Unsafe and vacant structure” of “abandoned home or residential property” means a structure located on previously platted and subdivided property that is not fit for human habitation and has been declared unsafe and vacant by the City in which it is located in violation of applicable ordinance.
- (f) “Weed lot” means a previously platted and subdivided lot that is vacant or upon which an unsafe and vacant structure is located and that contains debris, rubbish, or grass which is higher than that permitted by local ordinance for developed land.
- (g) Abandoned vehicle Any vehicle which :
 1. Is in a wrecked, dismantled, partially dismantled, not operated for personal or business use for a period of time in excess of sixty (60) days, or otherwise in an inoperable condition; or,
 2. Does not have affixed thereto an unexpired license plate and has been parked, stored or left, whether attended or not, upon any public or private property in the city of a period of time in excess of thirty (30) days.
 3. This term includes any boat or other recreational vehicle in the condition listed in paragraph 1. The term does not include any vehicle that is (a). enclosed in a building on private property; or held in connection with a business enterprise on property zoned for a junk yard, vehicle repair facility or vehicle storage yard, or (b). inoperable condition specifically designed for operation off road, or (c). retained primarily as an antique collector’s item and registered under state law as an antique vehicle.

Section 2. Unsightly or unsanitary conditions on real property. All owners of lots or other real property located within the corporate limits of the City of Diamond City, Arkansas, shall:

- (a) Keep grass, weeds and brush cut on said property in such a manner that it shall not be unsightly or constitute a health or fire hazard;
- (b) Keep said property clear of any unsanitary or unsightly conditions and offensive odors, including but not limited to an accumulation of trash or garbage, waste products from commercial activity, refuse accumulations of

animal, fruit or vegetable matter, rubbish, leaves, limbs, logs, metal, plastic, paper or other items that may likely increase the risk of hazard of fire, create a health hazard or constitute a public nuisance;

- (c) Eliminate, fill up or remove stagnant pools of water or other liquids from said property, including but not limited to open wells, shafts, basements, cellars or excavations; and
- (d) Remove or eliminate any other unsanitary thing, place or condition which might become a breeding ground for mosquitoes, flies, other insects, rodents and germs, or which may create a condition offensive, harmful or dangerous to the health, safety, aesthetics or public welfare generally of the community.

Section 3. Vacant lots or other real property. Property owners are prohibited from permitting the accumulation of debris upon vacant lots or other real property in the City of Diamond City, Arkansas. It shall be the duty of the property owners to remove all debris, garbage, rubbish or refuse which is unsightly or which may endanger public health if and when notified in writing by the Mayor or his designated representative.

Section 4. Inspections. The Mayor, or his designated representative, or the City's code enforcement officer or the City's police officers are specifically charged with the enforcement hereof, and shall make such inspections and other trips as may be necessary throughout the corporate limits of the City in order to determine compliance.

Section 5. Notice required. Any owner of any lot or other real property located within the corporate limits of the City who shall fail to perform any of the duties required herein shall be notified of said failure in writing by the Mayor or his designated representative. The written notification required herein shall: (a) state the date of the inspection; (b) state the condition or conditions that must be corrected; (c) order the owner to correct the same within seven (7) days of receipt of the notice; and (d) state that if the situation is not corrected within such time the Mayor, or his designated representative, may enter upon the property and take all steps necessary to remove, abate or eliminate said condition or conditions and (e) state that the cost will be charged against the owner of the property and shall constitute a lien on said real property. Notice may be issued by a police officer employed by the City, the Mayor or his designated representative, or the City's code enforcement officer. Notices shall be sent by regular mail and certified mail, return receipt requested. Notice to owners shall be sufficient if sent to the owner's address of record with the applicable county assessor, treasurer or collector.

Section 6. Notice to Lienholders. If the City wishes to secure a clean up lien, the City shall provide lienholders of record with notice seven (7) business days before undertaking any work at the property. Notice to lienholders is sufficient if sent to the lienholder's address as shown in the relevant land records. Notice is not required to be given to holders of unrecorded liens or to unrecorded assignees of lienholders. Any

lienholder receiving notice shall send a written response to the City within seven (7) business days of receipt of the notice indicating whether the owner of the property is in default under the terms of the note or mortgage.

Section 7. Notification of unknown real property owner. In case the owner of any lot or other real property is unknown or his whereabouts are not known or he is a nonresident of this state, a copy of the written notice referred to herein shall be posted upon the property. Before any action to enforce the lien shall be had, the City Recorder/Treasurer, or the City Recorder/Treasurer's designee, shall make an affidavit setting out the facts as to unknown address or whereabouts of nonresidents. Service of publication, as now provided for by law against nonresident defendants, may be had, and an attorney *ad litem* shall be appointed to notify the defendant by registered letter addressed to his last known place of residence if same can be found.

Section 8. Failure of owner or lienholder to take corrective action.

- (a) If the owner or lienholder fails, refuses or neglects to perform the corrective action within seven (7) days of receipt of the notice required, the Mayor or his designated representative, or the City's code enforcement officer or the City's police officers are hereby authorized to enter upon the property to take the specified action and do whatever else is necessary to correct or eliminate said condition. The costs, including all administrative and collection costs, incurred by the City shall be charged against the owner and lienholder of the property and shall constitute a lien against the property.
- (b) After the work has been completed, the City shall provide a second notice to the owner and lienholders of record. This notice shall contain the total amount of the clean up lien, including administrative and filing costs.
- (c) The City shall file the lien with the circuit clerk no later than one hundred twenty days (120) after completion of the clean up work on the property.
- (d) A public hearing shall be held before the City Council to confirm and impose the clean up lien after thirty (30) days' written notice by certified mail to the owner and lienholders of the property, if the name and whereabouts of the owner are known. The notice of public hearing may be combined with the notice containing the total amount of the clean up lien.
- (e) If the name of the owner cannot be determined, then the amount will be determined and the lien confirmed and imposed only after publication of notice of such hearing in a newspaper having a bona fide circulation in Boone County, Arkansas for one (1) insertion per week for four (4) consecutive weeks.

- (f) If the City determines to seek first priority status for the clean up lien it shall file an action with the circuit court of Boone County, Arkansas seeking a declaration that the clean up lien is entitled to priority.

Section 9. Enforcement of lien and collection of cost. The lien herein provided for may be enforced and collected at any time within ten (10) years after the lien has been filed in either one (1) of the following manners:

- (a) By an action for foreclosure in the circuit court by the City; or
- (b) The amount of the lien so determined at the public hearing confirming and imposing the lien, plus a ten percent (10%) penalty for collection, shall be certified by the City Council to the Boone County Tax Collector, and by him placed on the tax books as delinquent taxes, and collected accordingly. The amount, less three percent (3%) thereof, when so collected shall be paid to the City by the Boone County Tax Collector.

STATE LAW REFERENCE - See A.C.A. §14-54-901 - §14-54-904

Section 10. Appeal. The determination of the governing body confirming the amount of any clean up or court lien and creating and imposing any clean up or court lien is subject to appeal by the property owner or lienholder of record in the circuit court, if filed within forty-five (45) days after the determination is made. If the owner or lienholder fails to appeal in this time, the lien amount shall be deemed fully perfected and not subject to further contest or appeal.

The City shall file its lien with the circuit clerk no later than sixty (60) days after the governing body of the City confirms the lien amount, or if the lien is appealed, within sixty (60) days after the City wins on appeal.

Section 11. Penalty. Any person violating or failing to comply with any provisions hereof shall, upon conviction, be deemed to be guilty of a violation which shall be punishable by a fine not in excess of Two Hundred Fifty Dollars (\$250.00) per day per code violation.

Section 12. Repeal of conflicting ordinances. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

Section 13. Severability provision. In the event that any section, paragraph, subdivision, clause, phrase, or other provision or portion of this Ordinance shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Ordinance as a whole, or any part or provision, other than the part so decided to be invalid or unconstitutional, and the remaining provisions of this Ordinance shall be construed as if such invalid, unenforceable or unconstitutional provision or provisions had never been contained herein.

Section 14. Declaration of emergency. It is hereby found and determined that there is a need to govern the maintenance of real property in order to regulate unsightly and unsanitary conditions and the clearance thereof as provided by state law; that the City's current laws in this area are inadequate to protect the health and safety of the community, and that in order to prevent harm to the health of the community and assure the proper growth and development of the City of Diamond there is an immediate need for this Ordinance. Therefore, an emergency is declared to exist, and this Ordinance being immediately necessary for the preservation of the public peace, health, safety and welfare of the citizens of the City of Diamond City, Arkansas, shall become effective immediately from and after the date of its passage, to take effect as provided by the terms of this Ordinance.

PASSED AND APPROVED this 19th day of December, 2014.

Ayes 4 Nays 0 Abstentions 0 Absent 0

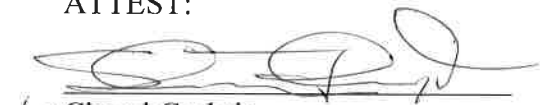
I, the undersigned, hereby certify that the foregoing Ordinance, 09-2014 to amend in its entirety Ordinance 10-11 was duly adopted by the City Council of Diamond City, Arkansas.

APPROVED:



Shari Marshall
Mayor

ATTEST:



for Cheryl Guthrie
Recorder/Treasurer
(SEAL)