

DIAMOND CITY, BOONE COUNTY, ARKANSAS

ORDINANCE No. 13-2022

AN ORDINANCE TITLED THE DIAMOND CITY "CLEAN PREMISES" VIOLATIONS AND ENFORCEMENT CODE AND DECLARING AN EMERGENCY

WHEREAS: The Diamond City, City Council has been asked by citizens to establish and enforce updated codes to keep privately owned areas clean and safe; and

WHEREAS: existing Ordinances No. 03-11 and 09-2014 need to be updated and replaced to accomplish City beautification and to eliminate health and safety issues; 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 the Ordinance.

THEREFORE: Ordinances No. 03-11 is amended and 09-2014 are hereby repelled and replaced as follows:

SECTION 1 GENERAL DEFINITIONS

A. Title: These regulations shall be known as the Diamond City Clean Premises Code of the City of Diamond City, Arkansas, hereinafter referred to as "this code".

B. Scope: The provisions of this code shall apply to all existing residential and nonresidential structures and all existing premises and constitute minimum requirements and standards for premises, structures, equipment and facilities for sanitation, protection from the elements, a reasonable level of safety from fire and other hazards, and for a reasonable level of sanitary maintenance; the responsibility of owners, an owner's authorized agent, operators and occupants; the occupancy of existing structures and premises, and for administration, enforcement and penalties.

C. Intent: This code shall be construed to secure its expressed intent, which is to ensure public health, safety and welfare in so far as they are affected by the continued occupancy and maintenance of structures and premises. Existing structures and premises that do not comply with these provisions shall be altered or repaired to provide a minimum level of health and safety as required herein.

D. Court: means the Boone District Court or Circuit Court

E. Lien: means a lien securing the cost of work undertaken by the City of Diamond City to remove, abate, eliminate a condition in violation of local codes. Securing the fines or penalties imposed by the Court of against the owner of an unsafe or vacant structure as listed in Section 1 A and B.

SECTION 2 APPLICABILITY

A General: Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall govern. Where differences occur between provisions of this code and the referenced standards, the provisions of this code shall apply. Where, in a specific case, different sections of this code specify different requirements, the most restrictive shall govern.

B Maintenance: Equipment, systems, devices and safe-guards required by this code or a previous regulation or code under the structure or premises was constructed, altered or repaired shall be maintained in good working order. An owner, owner's authorized agent, operator or occupant shall not cause any service, facility, equipment or utility that is required under this section to be removed from,

shut off from or discontinued for any occupied dwelling, except for such temporary interruption as necessary while repairs or alterations are in progress. The requirements of this code are not intended to provide the basis for removal or abrogation of fire protection and safety systems and devices in existing structures. Except as otherwise specified herein, the owner or the owner's authorized agent shall be responsible for the maintenance of buildings, structures and premises.

C. Application of other codes: Repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of City of Diamond City Building Code.

D. Existing remedies: The provisions in this code shall not be construed to abolish or impair existing remedies of the jurisdiction or its officers or agencies relating to the removal or demolition of any structure that is dangerous, unsafe and insanitary.

E Workmanship: Repairs, maintenance work, alterations or installations that are caused directly or indirectly by the enforcement of this code shall be executed and installed in a workmanlike manner and installed in accordance with the manufacturer's instructions.

F. Historic buildings. The provisions of this code shall not be mandatory for existing buildings or structures designated as historic buildings where such buildings or structures are judged by the code official to be safe and in the public interest of health, safety and welfare.

G Conflicts. Where conflicts occur between provisions of this code and the referenced standards, the provisions of this code shall apply.

H Provisions: in referenced codes and standards. Where the extent of the reference to a referenced code or standard includes subject matter that is within the scope of this code, the provisions of this code, as applicable, shall take precedence over the provisions in the referenced code or standard.

I Requirements: not covered by code. Requirements necessary for the strength, stability or proper operation of an existing fixture, structure or equipment, or for the public safety, health and general welfare, not specifically covered by this code, shall be determined by the code official.

J. Application of references: References to chapter or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such chapter, section or provision of this code.

K Other laws: The provisions of this code shall not be deemed to nullify any provisions of local, state or federal law.

SECTION 3 DEPARTMENT OF PROPERTY MAINTENANCE INSPECTION

A. General: The property maintenance inspection duties are hereby given to the Diamond City Police Department Code Enforcement Division and the official in charge thereof shall be the Police Chief. In general terms, all personnel assigned to this division shall be known as the Code Official.

B. Deputies: In accordance with the prescribed procedures of this jurisdiction and with the concurrence of the appointing authority, the Police Chief shall have the authority to appoint personnel as needed to this division, and these deputies shall have powers as delegated by the Police Chief.

C. Liability: The Code Enforcement official or employee charged with the enforcement of this code, while acting for the jurisdiction, in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered civilly or criminally liable personally, and is hereby relieved from all personal liability for any damage accruing to persons or property as a result of an act or by reasons of an act or omission in the discharge of official duties.

D. Legal defense: Any suit or criminal complaint instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by the legal representative of the jurisdiction until the final termination of the proceedings. The code official or any subordinate shall not be liable for costs in an action, suit or proceeding that is instituted in pursuance of the provisions of this code.

SECTION 4 CLEAN PREMISES

A. Requirements of Owner or Occupant of Property: The owner(s) or occupant(s) of property within the Diamond City, City limits are hereby required to:

1. Maintain, cut, and remove weeds, grass, and brush, or any other non-cultivated plant(s), which are not used for agricultural purposes, which exceed the height of eight (8) inches.
2. Remove garbage, rubbish, or any other unsanitary or unsightly articles and things including, but not limited to, boards, bricks, sheet metals, construction materials, appliances, and plumbing fixtures. This article applies to items which are in public view and are not being used in immediate construction projects.
3. Eliminate, fill, or remove holes, items containing water, pools, ponds, or any nuisance that might attract children or vagrant persons, or might become a breeding place for flies, mosquitoes, rats, pests, germs, or vermin, or any unsafe or harmful to persons.
4. Remove any items, whether valuable or junk, that might collect to interfere with the flow of drainage water in ditches, drains, or culverts.

B. Clean Premises Enforcement: Violators of the above "clean premises" codes will be given written notice that they have seven (7) calendar days to correct the violation. Notice may be by personal delivery, by certified mail to the last known address, or by posting the "Notice" on the premises. If the condition is not corrected in the seven (7) days, the City is authorized to enter the violating premises or property to perform the required work, or the City may pay a private contractor to perform mowing or clean-up. The owner may also be charged and cited into Boone County District Court. The cost of labor, equipment, and supplies incurred by the City may be claimed by the City as restitution, together with fines and costs levied by the District Court Judge. In cases where the violator does not respond, one notice attempt shall be sufficient for repeat mowing when required.

C. Procedure where owner's whereabouts in unknown or is a nonresident: In the event the owner has not been located, the City may file a lien against the premises for the cost of clean-up, as authorized by Arkansas Code Section 18-44-101 in which the lien may be enforced against the real estate within eighteen (18) months by filing suit in Boone County District or Circuit Court,

D. Fines and costs: A person convicted of a violation of this code for a first offense shall be guilty of an unclassified misdemeanor and shall be fined up to one thousand dollars (\$1,000). For premises violations that are not corrected, the fines may apply and be calculated for each day the violation continues, as well as any costs incurred by the City for the violation may be added as restitution.

SECTION 5 UNSAFE STRUCTURE

A. Damaged and Unsafe Structures: The owners of fire damaged, dilapidated, or casualty damaged properties that renders the structure(s) or premises unsafe, unsightly, or unsanitary are required to repair or eliminate the condition. The owner of the property shall be given written notice of the violation by a designated city official, and shall have thirty (30) days in which to eliminate the violation or, if additional time is needed and requested, to present a written plan of timely abatement acceptable to city officials. If the correction or abatement is not satisfactory to the enforcement official(s), a nuisance may be declared by Resolution of the city council. A structure found to be a nuisance may be condemned by a Resolution of the city council,

B. Nuisance and condemnation of buildings:

- a. That it shall be and it is hereby declared to be unlawful for any person or persons, partnership, corporation or association, to own, keep or maintain any house, building and/or structure within the corporate limits of the City of Diamond City, Arkansas, which constitutes a nuisance and which is found and declared to be a nuisance by Resolution of the city council.
- b. That any such house, building and/or structure which is found and declared to be a nuisance by Resolution of the city council may be condemned to ensure the removal thereof as herein provided.
- c. That the Resolution of the city council condemning any house, building and/or structure which constitutes a nuisance will include said Resolution an adequate description of the house, building and/or structure, the name or names, if known, of the owner or owner's thereof; and shall set forth the reason or reasons said house, building and/or structure is or has been condemned as a nuisance.
- d. After a house, building and/or structure has been found and declared to be a nuisance and condemned by Resolution, a true or certified copy of said Resolution will be mailed to the owner or owners thereof; provided that, if the owner or owners of said house, building and/or structure be unknown or if his or their whereabouts or last known address be unknown, the posting of the copy of said Resolution on premises as herein above provided will suffice as notice.
- e. If the house, building and/or structure constituting a nuisance has not been torn down and removed, or said nuisance otherwise abated within thirty (30) days after notice is given or posted, the same may be torn down and/or removed by the city. Arkansas Code Sections 14-54902, 903, and 904 are hereby adopted as if set out herein word for word.
- f. The persons designated by the Mayor to tear down and remove any such house, building and/or structure constituting a nuisance will insure the removal thereof and dispose of the same in such a manner as deemed appropriate in the circumstances and to that end may, if the same have a substantial value, sell said house, building and/or structure, or any salable material thereof, by public sale to the highest bidder for cash after ten (10) days' notice thereof being first given by one publication in some newspaper having a general circulation in the city.
- g. All of the proceeds of the sale of any such house, building, and/or structure or the proceeds of the sale of salable materials therefrom shall be paid to the City Treasurer. If any such house, building and/or structure or the saleable materials there from be sold for an amount which exceeds all costs incidental to the abatement of the nuisance (including the cleaning up of the premises) by the city, plus any fine or fines imposed, the balance thereof will be returned by the City Treasurer to the former owner or owners of such house, building and/or structure constituting the nuisance.
- h. If the city has any net costs in removal of any house, building or structure, the city shall have a lien upon the property as provided by Section I of Act 8 of 1983. The lien may be enforced at any time within eighteen (18) months after the work has been done by an action in the District or Circuit Court.

SECTION 6 INOPERABLE OR PARKED MOTOR DRIVEN VEHICLES AND EQUIPMENT

A. Inoperable or parked motor driven vehicles and equipment: The owner(s) or occupant(s) of property within the City limits of Diamond City are hereby required to remove motor vehicles, trailers, and equipment that is unused, inoperable, and has been parked fourteen (14) days without use. The vehicle or equipment shall be presumed to be inoperative when any of the following conditions exists:

- a. One or more tires are flat.
- b. One or more wheels are missing.
- c. Weeds or grass have grown around the vehicle or equipment.
- d. The vehicle has no current registration.

e. Any other factor that is indicative of non-use.

Note: This section does not apply to vehicles or equipment stored in closed garages or outbuildings, but does apply to driveways, yards, and open carports. This section does not apply to automotive or equipment businesses operating in commercial or industrial zones.

B. Enforcement: Violations of this section shall be given written notice that they have seven (7) calendar days to remove the vehicle or equipment. Notice may be by personal delivery or by certified mail. If the condition is not corrected in the seven (7) days, the City is authorized and directed to remove the violating vehicle or equipment. Alternatively, the City may engage and authorize a licensed towing/handling entity to remove the vehicle, all at the expense of the violator. The owner may also be charged and cited into Boone County District Court.

C. Fines and costs: A person convicted of a violation of this code section shall be guilty of an unclassified misdemeanor and shall be fined up to one thousand dollars (\$ 1000). For violations that are not corrected, the fines may apply and be calculated for each day the violation continues. Also, any reasonable costs to remove the vehicle or equipment may be added to the court costs as restitution.

SECTION 7 ABANDONED VEHICLES

A. Abandoned vehicles and equipment: Any vehicle or equipment parked on the city street of the City of Diamond City for a period of more than twenty-four (24) hours shall be considered to be abandoned and dealt with as hereafter set out. This provision shall not apply to vehicles parked in the street in front of a residence by the resident thereof or his guests.

B. Removal and storage: Any vehicle so parked shall be towed to an appropriate storage place by licensed business authorized and directed by the City to do so. Said vehicle shall remain in storage until such time as claimed by the proper owner. The towing business shall have a lien against said vehicle for the tow and storage charges incurred by reason of said abandonment. For the purpose of identifying the person with whom the charge abandonment, it shall be presumed as a matter of law that the registered title holder of said vehicle is the one who did so abandon.

C. Fines and costs: A person convicted of a violation of this code section shall be guilty of an unclassified misdemeanor and shall be fined up to one thousand dollars (\$1,000). For violations that are not corrected, the fines may apply and be calculated for each day the violation continues. Also, any reasonable costs to remove the vehicle or equipment may be added to the court costs as restitution.

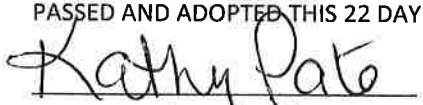
SECTION 8 Severability:


If a section, subsection, sentence, clause or phrase of this code is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

SECTION 9. EMERGENCY CLAUSE:

This Ordinance being necessary to ensure that the City of Diamond City is free from clean premises issues, an emergency is hereby declared to exist, and this Ordinance shall be in full force and effect and after its passage and approval and the filing of adequate copies of the same with the City Recorder and a publication of the notice that the same has been filed, and the filing of copies of the same with the County Recorder of Boone County, Arkansas.

Now, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF DIAMOND CITY, ARKANSAS:
PASSED AND ADOPTED THIS 22 DAY OF November, 2022


Kathy Pate/ Recorder, Diamond City


Jaime Nuessner/ Mayor

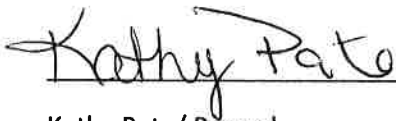
PROOF OF POSTING OF ORDINANCE

STATE OF ARKANSAS

COUNTY OF BOONE

We, Kathy Pate and Jaime Nuessner do solemnly swear that as the city Recorder and the Mayor, respectively, of and for the City of Diamond City, Boone County, Arkansas, that a copy of Ordinance 13-2022 was on the 26th Day of November, 2022 duly posted in five separate places inside the limits of Diamond City, for 30 days.

Dated this 26th day of November 2022

A handwritten signature in cursive script that reads "Kathy Pate". The signature is written above a solid horizontal line.

Kathy Pate/ Recorder

A handwritten signature in cursive script that reads "Jaime Nuessner". The signature is written above a solid horizontal line.

Jaime Nuessner/ Mayor