

ORDINANCE NO. 2001-15

AN ORDINANCE REQUIRING THE MAINTENANCE OF REAL PROPERTY; PROVIDING FOR THE CONDEMNATION OF STRUCTURES FOR THE PURPOSE OF ABATEMENT OF NUISANCES WITHIN THE CITY; DECLARING AN EMERGENCY THEREFORE; AND FOR OTHER PURPOSES.

WHEREAS, it is the desire of the City Council of the City of Ozark to establish regulations and guidelines for the maintenance of real property within the City and to establish procedures for enforcing the abatement of nuisances within the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OZARK, ARKANSAS:

Section 1: Purpose.

The purpose of this ordinance is to implement and enforce the police powers of the City for the abatement of dangerous, unsightly and unsanitary conditions constituting a public nuisance which may exist upon real property located within the city limits, and also to implement and enforce the police powers of the City to require, by condemnation, the repair or removal of houses, building and/or structures which, due to their dilapidated and unsafe condition, constitute a public nuisance.

Section 2: Prohibited Acts.

(a) It shall be unlawful for any property owner, or occupant of any real property located within the City of Ozark to fail or refuse to cut weeds, grass or dead or dying trees, to fail or refuse to remove garbage, rubbish and other unsightly and unsanitary articles and things from the real property, to fail or refuse to abate fire and flooding hazards, or to fail or refuse to fill up or remove stagnant pools of water or any other unsanitary thing, place or condition which might become a breeding place for mosquitoes, flies and germs harmful to the health of the community.

(b) It shall be unlawful for any property owner, or occupant of any real property located within the City of Ozark to allow, either by permission or omission, the dumping or accumulation of any trash, litter, garbage, debris or refuse upon the real property by other parties either known or unknown or to fail and refuse to remove all trash, litter, garbage, debris or refuse which is unsightly or which may endanger public health.

(c): It shall be unlawful for any property owner, or occupant of any real property located within the City of Ozark, Arkansas to use said real property for the open storage

of any abandoned motor vehicle, ice box, refrigerator, stove, glass, building material, building rubbish or similar items or to fail or refuse to remove such items from the property. For the purposes of this Ordinance, an "abandoned motor vehicle" is defined as one that is in a state of disrepair and incapable of being moved under its own power. However, this section shall not be in force as to a commercial enterprise duly licensed and permitted to carry on a business in the storage of such items on a tract property zoned for such business and complying with any and all other conditions required for the lawful functioning of such business.

(d) It shall be unlawful for any property owner or occupant of any real property located within the City of Ozark to allow, either by permission or omission, any of the conditions set out in subparagraphs (a), (b), and (c) above, upon any alleys, utility easements, rights-of-way and/or easements (including ditches) adjoining the real property.

(e) It shall be unlawful for any owner to fail or refuse to repair, remove or raze any house, building and/or structure which has deteriorated to such a condition, or has been damaged to such an extent, as to be dilapidated, unsightly, unsafe, unsanitary, obnoxious, or to constitute a fire hazard or in other manner be detrimental to the public welfare to such a degree as to found and declared a nuisance by the City.

(f) It shall be unlawful for any owner and/or occupant to cause, create, permit or cause to occur within the City of Ozark, Arkansas any nuisance, including but not limited to those listed above in this Section, on property owned or occupied by any person and each day such nuisance is permitted to remain, after notice from the City for the abatement thereof, shall subject the person or persons responsible for the non-abatement of such nuisance to punishment as provided by this Ordinance.

Section 3: Guidelines.

Regarding the cutting and removal of weeds, grasses, and trees, owners and occupants or real property located within the City of Ozark, Arkansas shall be governed by the following guidelines:

(a) Except as otherwise provided, all lands, whether or not platted and/or subdivided, which have never been cleared or developed and which remain in their natural state, including, but not limited to, undeveloped open spaces such as meadows or similar lands which can be used for grazing or forage, may be maintained in their undeveloped natural state, provided, however, that weeds, grasses, or trees must be cut or removed if such vegetation blocks pedestrian or vehicular vision or traffic.

(b) All property, except those described in sub-section (a) above, shall be maintained so that weeds and grasses thereon shall not exceed twelve (12) inches in height.

(c) The owners and occupants of all property, except those described in subparagraph (a) above, shall maintain all unopened street rights-of-way, easements for streets, utility, drainage, walking, or other purposes, unopened alleys and opened alleys, other than the portion of same used for vehicular traffic, which adjoin said owner or occupants' property so that weeds and grasses shall not exceed twelve (12) inches in height. If any such right-of-way, easement or alley is adjoined by the properties of two (2) property owners, then each owner or occupant shall maintain such right-of-way, easement or alley to the midpoint thereof.

(d) The owners or occupants of all lands shall remove or cause to be removed all dead or dying trees and dead parts of living trees from such lands when such dead or dying trees or dead parts of trees shall constitute a hazard to personal safety or property due to the imminent possibility of their falling upon or being blown upon public property or property of other owners, or when such trees, because of decay or disease, constitute a nuisance and/or imminent health threat to other trees located on public property or property of other owners.

(e) After the cutting of tall weeds, rank grasses, or other vegetation, if the resulting yard waste itself creates or constitutes a condition which is unsafe, unsanitary, dangerous, unsightly or a fire hazard, said yard waste shall also be required to be removed from the property.

Section 4: Removal After Disaster.

If any property owner shall suffer the loss, either total or partial, of a house by fire or tornado, it shall be the duty of the Code Enforcement Officer to immediately notify, in writing, the property owner to remove all debris for the lot. It shall be the duty of the property owner within 30 days from receipt of such notice to remove all debris or refuse on said lot. The notice required under this Section is separate from the notice required by Section 7 below.

Section 5: Railroads.

All railroad companies operating within the city limits of the City of Ozark, Arkansas shall maintain their rights-of-way at or around any railroad crossing with a public street, alley or other public way free from weeds, grasses, trees, bushes, shrubs, and other growing vegetation which may obstruct the view of pedestrians and vehicle operators using the public ways, for a distance of one hundred (100) yards in all right-of-way directions from such railroad crossings. Further, all such railroad companies shall maintain their rights-of-way so that weeds and grasses thereon shall not exceed twelve (12) inches in height.

Section 6: Inspection.

No notice as described in Section 7 below, shall be issued to any owner or occupant until a through inspection of the condition of the relevant real property and/or structure has been conducted by the Code Enforcement Officer, or other designated representative of the Mayor, and that official (of officials) determined that the existing condition of the real property and/or structure constitutes a substantial health, fire, flooding, safety or aesthetic hazard or deterrent to the well-being of the inhabitants of the City.

Section 7: Notice.

(a) Upon the determination that a property's or structure's condition is in violation of this Ordinance, the Code Enforcement Officer, or other designated official, shall issue a clean-up Notice upon the owner of occupant of properties found in violation of sub-sections (a), (b), (c), and (d) of Section 2 above; and upon the owner of structures found in violation of sub-section (c) of Section 2 above. The Notice shall be in writing, signed by the Code Enforcement Officer, or other designated official, and delivered to the owner and/or occupant of the property. The Notice shall be delivered to the aforementioned parties in one (1) of the following two (2) methods:

- (1) By certified mail, return receipt requested, or
- (2) By personal delivery by a city officer or employee, who may be but does not have to be, an employee of the Police Department.

The Notice shall state the conditions on the subject real property or structure which are ordered abated and the Notice shall advise the deliverer that, if the conditions listed in the Notice have not been abated within seven (7) days, the City may proceed with a criminal charge pursuant to Section 8(b) below and/or shall proceed according to the provisions of this Ordinance and other valid legislative enactments to abate the listed conditions, and that the costs of such action shall be charged to the owner of the subject property, and shall constitute a lien on such property and may be collected as are real property taxes.

(b) In case the owner of any lot, structure or other real property is unknown or the owner's whereabouts are not known or such owner is a non-resident of this State, then a copy of the written Notice referred to above shall be posted in a conspicuous place upon the premises. Further, the City Clerk shall make an Affidavit setting out the facts as to the unknown address or whereabouts of the non-resident owner. After the execution of the Affidavit by the City Clerk, service by publication, as now provided for by law against non-resident defendant, may be had upon the non-resident owner and an Attorney-ad-Litem shall be appointed to notify the non-resident owner by registered letter addressed to his last know place of resident if same can be found.

(c) A clean-up Notice issued to an owner or occupant for abatement of conditions set out in sub-sections (a), (b), (c), and (d) of Section 2 above shall remain in full force and effect for a period of twelve (12) months and shall be considered sufficient notice to said owner or occupant of and recurring violations occurring on that owner's or occupant's lot or other real property within that twelve (12) month period. Any further violations occurring within the twelve (12) month period on the owner's or occupant's lot or other real property upon which notice has been served shall subject the owner or occupant to the penalties set out within this Ordinance.

Section 8: Enforcement of Ordinance.

(a) Civil Enforcement.

(1) Clean-up lots. In the event the owner and/or occupant of any real property, who is given a Notice to abate a condition or conditions pursuant to sub-sections (a), (b), (c) and (d) of Section 2 above, shall fail or refuse to so comply with such Notice within the time specified therein, the Mayor may authorize City staff, or private persons hired for that purpose, to enter upon the property and have said weeds, rank grass, or other vegetation cut and removed, or eliminate any unsanitary and unsightly condition, and the cost thereof, as determined according to the procedures set out in this Ordinance, shall be charged against said premises and shall constitute a lien thereon.

(2) Condemnation of structures. In the event the owner of any real property, who is given a Notice to abate a condition pursuant to sub-section (c) of Section 2 above, shall fail or refuse to so comply with such Notice within the time specified therein, the Code Enforcement Officer shall initiate proceedings to have the house, building and/or structure condemned.

(A) The Property owner shall be given a written Notice of Condemnation Proceedings, signed by the Code Enforcement Officer, which shall give an adequate description of the house, building and/or structure; the name or names, if known, or the owner or owners thereof, shall set forth the reason or reasons said house, building, and/or structure is considered in non-compliance with this Ordinance, the legal consequences of failing or refusing to abate the offensive condition, and shall state the date, time and place of the City Council Meeting at which the issue of the condemnations of the property shall be addressed. The Notice of Condemnation Proceedings shall be delivered to the owner or owners in one (1) of the following two (2) methods:

- (1) By certified mail, return receipt requested, or
- (2) By personal delivery by a city officer or employee, who may be, but does not have to be, an employee of the Police Department.

(B) In case the owner of any lot, structure or other real property is unknown or the owner's whereabouts are not known or such owner is a non-resident of

the State, then a copy of the written Notice of Condemnation Proceedings referred to above shall be posted in a conspicuous place upon the premises. Further, the City Clerk shall make an Affidavit setting out the facts to the unknown address or whereabouts of the non-resident owner. After the execution of the Affidavit by the City Clerk, service by publication, as now provided for by law against non-resident defendant, may be had upon the non-resident owner and an Attorney-ad-Litem shall be appointed to notify the non-resident owner by registered letter addressed to his last known place of resident if same can be found. If appropriate, at the option of the City, the timing and procedure used for service of the initial clean-up Notice and the Notice of Condemnation Proceedings may be combined for the purpose of utilizing the Affidavit of the City Clerk, the service by publication and the of the Attorney-ad-Litem so that such Notices may be served upon the non-resident owner or owners simultaneously.

- (C) At the City Council meeting specified in the Notice of Condemnation Proceedings, the City Council shall make a determination as to whether the condition of the said house, building, and/or structure is in compliance with the provisions of this Ordinance or whether the said house, building and/or structure constitutes a nuisance. In the event the City Council determines the house, building, and/or structure is a nuisance, the City Council shall pass a Resolution declaring the said house, building, and/or structure to be a nuisance and condemning the property. The Resolution condemning any house, building, and/or structure which constitutes a nuisance shall include in said Resolution and adequate description of the house, building, and/or structure; the name of names, if known, of the owner or owners thereof; 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 as herein provided a true or certified copy of said Resolution shall be mailed to the owner or owners thereof if the whereabouts of said owner or owners thereof be known or their last known address be known, and a copy thereof shall be posted at a conspicuous place on said house, building, and/or structure. 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 as hereinabove provided with suffice as notice.
- (E) If the house, building, and/or structure constituting a nuisance has not been repaired, torn down, or removed, or said nuisance otherwise abated, within thirty (30) days after posting the true copy of the Resolution at a conspicuous place on said house, building, and/or structure as provided

above, then the said house, building, and/or structure may be torn down and/or removed by the City or its authorized representative, and the cost thereof, as determined according to the procedures set out in this Ordinance, shall be charged against said premises and shall constitute a lien thereon.

- (F) The City employee, or any other person or persons, designated by the Mayor to tear down and remove and 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 in that end may, if the same have a substantial value, sell said house, building, and/or structure or any saleable material thereof, by public sale to the highest bidder for cash, ten (10) days notice thereof being first given by one publication in some newspaper having a general circulation in the City, to insure its removal and the abatement of the nuisance.
- (G) All the proceeds of the sale of any such house, building, and/or structure, or the proceeds of the sale of saleable materials therefrom and all fines collected from the provisions of this Ordinance shall be paid by the person or persons collecting the same, the City Clerk. If any such house, building, and/or structure, or the saleable materials thereof, be sold for an amount which exceeds all cost 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 Clerk to the former owner or owners of such house, building, and/or structure constituting the nuisance.

Section 8: (cont.): Enforcement of Ordinance.

(b) Criminal Enforcement

(1) In addition to the civil enforcement procedures set out herein, in the event the owner and/or occupant of any real property, who is given a Notice to abate a condition pursuant to provisions of this Ordinance, shall fail or refuse to so comply with such Notice within the period of time established for compliance by such Notice, said owner and/or occupant may be issued a Citations by the Code Enforcement Officer to appear in the Ozark District Court and upon conviction thereof shall be deemed guilty of a misdemeanor and shall be subject to a fine of not less than TWENTY-FIVE DOLLARS (\$25.00) and each day that such owner and/or occupant refuses to comply with the Notice after the expiration of the time limit provided, shall be considered a separate offense and be subject to the same fine as set out herein.

(2) In the event the owner and/or occupant on any real property which is in violation of the provisions of this Ordinance, shall fail or refuse to abate the offensive condition or conditions and/or fail or refuse to abide by the orders of the Municipal

Court, the City may also take such civil actions as are provided under sub-section (a) of this Section.

Section 9: Enforcement of Lien.

If the City has incurred any costs in the clean-up of a lot or has incurred any net costs in the removal of any house, building, and/or structure, the City shall have a lien upon said property as provided by A.C.A. § 14-51-904. The lien imposed for either occurrence may be enforced in either one of the following manners:

(a) The lien may be enforced at any time within eighteen (18) months after work has been done, by an action in the Circuit Court; or,

(b) The amount of the lien herein provided may be determined at a hearing before the City Council, held after thirty (30) days written notice by certified mail to the owner or owners of the property, if the name and whereabouts of the owner or owners be known, and if the name of the owner or owners cannot be determined, then only after publication of notice of such hearing in a newspaper having a bona fide circulation in Franklin County for one (1) insertion per week for four (4) consecutive weeks. The determination of the City Council is subject to appeal by the property owner or owners in the Circuit Court. The amount so determined at said hearing, plus ten percent per annum (10%) penalty for collection, shall be certified by the City Council to the Franklin County Tax Collector, and by that official placed on the tax books as delinquent taxes, and collected accordingly, and the amount, less three percent per annum (3%) thereof, when so collected shall be paid to the City of Ozark by the Franklin County Tax Collector.

Section 10: Supplemental to Codes.

The nuisance abatement regulations and enforcement procedures set out within this Ordinance are supplemental to any other public welfare technical codes, including but not limited to, building, fire, life safety, plumbing, electrical and mechanical codes, and the enforcement provisions of such codes.

Section 11: Severability.

If, for any such reason, any portion of this Ordinance is held to be invalid, such invalidity shall in no way affect the remaining portions thereof which are valid, but such valid portions shall be and will remain in full force and effect.

Section 12: Prior Ordinance Repealed.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 13: Emergency Clause.

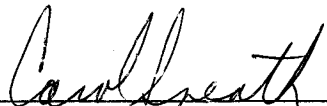
It is urgent that the City of Ozark have comprehensive and viable codes to enforce the abatement of nuisances existing on real property within the City in order to protect the health and safety of its citizens and the protection of property within the City, thereby an emergency is declared to exist and this Ordinance being necessary for the immediate protection of the public peace, health and safety shall take effect immediately on its passage and approval.

PASSED AND APPROVED THIS 5th DAY OF November,
2001.



MAYOR, Todd Timmerman

ATTESTED:



CITY CLERK, Carol Sneath

JPV:var
ozark.ord25

ORDINANCE NO. 2007-3

AN ORDINANCE AMENDING ORDINANCE NO. 2001-15 REQUIRING THE MAINTENANCE OF REAL PROPERTY TO PROVIDE FOR THE READJUSTMENT OF PENALTIES AND OTHER MATTERS; DECLARING AN EMERGENCY THEREFORE; AND FOR OTHER PURPOSES.

BE IT ORDAINED BY THE CITY OF THE CITY OF OZARK, ARKANSAS, THAT:

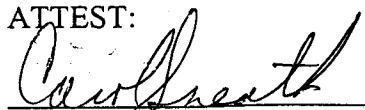
SECTION 1. Section 8 of Ordinance 2001-15 shall be and hereby is amended to read as follows:

“Section 8. In addition to the civil enforcement procedures set out herein, in the event the owner and/or occupant of any real property, who is given a Notice to abate a condition pursuant to provision of this Ordinance, shall fail or refuse to so comply with such Notice within the period of time established for compliance by such Notice said owner and/or occupant may be issued a Citations by the Code Enforcement Officer to appear in the Ozark District Court and upon conviction thereof shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined a minimum of \$100 for the first offense plus costs, and for each subsequent offense shall be fined a minimum of \$250”, plus costs.

SECTION 2. It being necessary for the preservation of the public peace, health, and safety, an emergency is hereby declared to exist, and this ordinance shall be in full force and effect immediately after its passage.

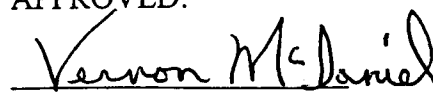
PASSED AND APPROVED this 12th day of March, 2007.

ATTEST:



City Clerk, Carol Sneath

APPROVED:



Mayor, Vernon McDaniel