

ORDINANCE NO. 10-11

Amended
by Ord.
09-20/14

AN ORDINANCE TO REGULATE GRASS AND WEED NUISANCES, ABANDONED AND INOPERABLE VEHICLES AND OTHER NUISANCES AND TO ESTABLISH PROCEDURES FOR THE ABATEMENT OF THE SAME.

WHEREAS, an abundance of abandoned or inoperable vehicles, abandoned, uninhabitable, or dilapidated structures, overgrown grass and weeds, standing water, and other nuisances described herein within the city limits of Diamond City, Arkansas, could be injurious to the general welfare by providing breeding grounds and shelter for rats, mice, snakes, mosquitoes, and other vermin, insects and pests; or attaining heights and dryness that constitutes a serious fire threat or hazard; that cause the spread of weeds and when breathed, irritation to the throat, lungs, and eyes of the public; or hiding debris such as broken glass or metal that could inflict injury on a person going upon the property, or being unsightly and constituting a usual blight and;

WHEREAS, the removal and clearance of such abandoned or inoperable vehicles, overgrown, grass and weeds, and other nuisances described herein must be accomplished for the overall good and protection of the public as a whole.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DIAMOND CITY, ARKANSAS, AS FOLLOWS:

Section 1:

It shall be unlawful for the owner, occupant, or person in charge of a property within the City of Diamond City, Arkansas, whether vacant or not, to use said property for the open storage of any inoperable or abandoned vehicle, ice box, refrigerator, stove, or other appliances, glass, building material, building rubbish, and similar items, or to allow the accumulation of weeds, grass, dead trees, brush, trash, garbage, tires, standing water, and similar items that create a nuisance and blight on the community. Vehicles being restored as antique vehicles must be properly registered with the State and weeds and grass are not allowed to grow up around the vehicle being restored.

Section 2:

For the purpose of this ordinance, certain terms are defined as follows:

Abandoned vehicle: Any vehicle which:

Is in a wrecked, dismantled, partially dismantled, discarded, or otherwise inoperable condition; or,

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.

This term includes any boat or other recreational vehicle that is in a wrecked, dismantled, partially dismantled, discarded, or otherwise inoperable condition. The term does not include any vehicle that is;

1. Enclosed within a building on private property; or

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JEANNIE STEEN Clerk

By  D.C.

2. Held in connection with a business enterprise on property zoned for a junkyard, vehicle repair facility, or vehicle storage yard; or
3. Inoperable condition specifically adapted or designed for operation off road, or
4. Retained primarily as an antique collector's item and registered under state law as an antique vehicle.

Enforcing Official: Any employee designated by the Mayor as the person to exercise the authority and perform the duties delegated by this ordinance to the enforcing official.

Grass or Weed Nuisance: Any abundance of overgrown grass or weeds within the city which is injurious to the general public health, safety, and general welfare by providing breeding grounds and shelter for rats, mice, snakes, mosquitoes, and other vermin, insects, and pests; or attain such heights and dryness so as to constitute a fire threat or hazard; that cause and spread of weeds and, when breathed, irritation to the throat, lungs, and eyes of the public; or hiding debris, such as broken glass or metal, which could inflict injury on any person going upon the property; or being unsightly.

Improved Subdivision: A division of a tract of land or acreage into tracts or parcels and the improvements thereof by construction of streets, water lines, and, where applicable, sewer lines to serve the subdivision property.

Natural Condition: Denotes uncultivated and unseeded land, still in a state of nature, but any growth on land, once it has been cleared or plowed, is not a natural condition, even though it has not been planted, cultivated, or built upon by anyone.

Nuisance: Conduct within the municipality which unreasonably interferes with the use and enjoyment of lands or another including conduct on the property which disturbs the peaceful quiet and undisturbed use and enjoyment of nearby property; or which use constitutes a violation of health and safety codes adopted by the State of Arkansas or the municipality in which constitutes an imminent threat to the health, safety and welfare of any citizen shall constitute a nuisance unlawful personal conduct, working an obstruction of or injury to the right of another or of the public, and producing material annoyance, inconvenience, discomfort or hurt to another person or senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property of another.

Owner of Property: Includes legal titleholder, or lessee, or occupant of property, or agent of legal titleholder or lessee, in charge, possession or control of said property. For a building nuisance only, includes any mortgage holder of record.

UNLAWFUL NUISANCE:

It shall be unlawful for any person to permit or maintain the existence of any nuisance on any property under such person's ownership or control. Property under a person's ownership and control includes those areas referred to below in "Duties of Owner". A person with a duty to abate any nuisance is liable for separate and distinct offenses for each day the nuisance is allowed to remain after it has become such person's duty by notice of the enforcing official to abate it.

DUTIES OF OWNER:

It shall be the duty of the owner of any real property located within the city to maintain grass or weeds growing upon said property in such a manner as not to constitute a nuisance. The duties and obligations of owner extend to and include any real property situated within a dedicated right-of-way or easement burdening the property, except to the extent that it may be impracticable to do so because of facilities located thereon. Such right-of-way and easements must be maintained by the owner in a manner consistent with the maintenance of the owner's remaining property and within the requirements in this ordinance, except to the extent it may be impracticable to do because of public facilities located thereon.

MAINTENANCE PRACTICES OF CITY:

The dedication of and existence of a right-of-way for public road or of an easement for drainage or for public utilities represents the grant of only a limited interest in property and does not change the actual ownership of the property upon which the right-of-way or easement is located. The public authority maintains right-of-way and easements only to the extent necessary to maintain the public facility and to maintain safety. The owners of the burdened property continue to control the property, except to the extent that such control interferes with the public use. The public authority does not cut grass, weeds, and other growth upon right-of-way or easements except to the extent necessary for operations and safety purposes. All other maintenance is the responsibility of the owner of the property upon which the right-of-way or easement is located.

GRASS AND WEED DEFINITION AND EXCEPTIONS;

General: It shall be unlawful and a nuisance, in violation of this ordinance, for the owner of any real property situated within the corporate limits of the city to allow such real property to become overgrown with tall grass or with any weed or plant such as ragweed, cocklebur, or other weed of the like kind or any weed or any weed or plant that is otherwise noxious, dangerous, harmful or poisonous.

Exceptions: Excepted from such grass and weed nuisance requirements are.

1. Any property that is in its natural condition.
2. Any property which is located outside any improved subdivision and is located more than one hundred (100) feet from any boundary or any lot or parcel of real estate upon which any dwelling is located and more than one hundred (100) feet from any commercial enterprise. For good cause, the enforcement official may reduce the area subject to this ordinance to lesser distance.
3. Cultivated row crops and garden plants in their respective growing seasons. But this exception applies only to growing crops and garden plants and shall not be construed to permit any crops or gardens to become overgrown with grass and weeds in violation of the remaining terms of this ordinance.
4. Ornamental shrubbery and ground cover, provided that such uses are part of the landscaping theme and not associated with general deterioration of the property.

ACCUMULATION OF DEBRIS, RUBBISH, ETC.:

An accumulation or storage of debris, refuse, rubbish, brush, used building materials, parts of buildings, remains from building demolition, parts of untenable or uninhabitable structures, used machinery, used tires, used vehicles, parts of vehicles, abandoned vehicles, or any other materials which may provide a breeding place for mosquitoes, harmful insects, rodents, and snakes or is unsightly as to be offensive to the surrounding area is a nuisance in violation of this ordinance.

UNINHABITABLE/DILAPIDATED STRUCTURES, ETC.

Any structure, permanent or temporary in nature, without sound walls, roof, doors, windows, or utilities necessary for habitation, storage or general use due to damage caused by neglect, vandalism, fire, weather, earth movement, animals, insects, or plant life.

ENFORCEMENT BY CITY:

Whenever, in the opinion of the enforcement officer, a nuisance exists, the official shall order the owner of the property on which the nuisance is located to abate the condition. The enforcement officer shall give the owner written notice in person or by certified mail. The notice shall require the owner to comply with this ordinance within the time stated in the notice. The notice shall apprise the owner of the alleged nuisance and give the name of the person to whom the owner can address the complaint. For a building nuisance, the notice shall contain the names of all owners and lien holders of the property, a legal description of the property, and the nature of the proceeding.

The notice shall be sent to the person shown by the records of the county tax collector to have been the last person assessed for payment of ad valorem tax on the property where the nuisance is situated. It shall be the responsibility of that person to promptly advise the enforcing official of any change in ownership or interest in the property. It shall be unlawful to knowingly fail to notify the enforcing official of any such change of ownership or interest. The enforcing official shall cause a copy of each building nuisance notice to be recorded in the Recorder's Office of the City of Diamond City, Arkansas.

The notice shall also be posted in a conspicuous place on the property, preferably within three (3) feet of an entrance to the building or structure. If there is no entrance or no structure, notice may be posted at any location on the property.

The notice shall require the owner to complete abatement of any nuisance within the following periods, provided the enforcing official may stipulate additional time, but in no case more than a total of one hundred twenty (120) days.

1. Fourteen (14) days from the date of notice if it is a grass or weed nuisance.
2. Ninety (90) days from the date of notice if it is a building nuisance
3. Thirty (30) days from the date of notice if it is any other type of nuisance including, but not limited to, burned structures or abandoned vehicles.

FAILURE TO COMPLY:

If the owner fails, neglects, or refuses to comply with the notice to abate the nuisance, the enforcing official may proceed to prosecute said person for a violation of the provisions of this code. The enforcing official may issue a summons and complaint or citation as provided under Ordinance No. 10-11 of the City of Diamond City, Arkansas, to the owner of the property, requiring the owner to appear in District Court to answer charges for the violation of this ordinance. The summons and complaint shall name the party charged, the address of the property where the alleged violation is located, and the nature of the offense or violation. It shall also apprise the owner of the date, time, and place at which to appear for court. The summons and complaint, returnable to the District Court, shall be served on the owner by any enforcing official, who shall forthwith appear and make oath as to the alleged offense before a judge or magistrate of the Court. This provision for the issuance of a summons or complaint to District Court Judge or magistrate and making oath as to the fact and applying for a warrant with respect to any alleged offense, in lieu of issuing a summons and complaint.

All violations of the provisions of this ordinance shall be punishable by:

1. After the set number of days listed above under "Enforcement by City," a fine of One Hundred (100) dollars shall be imposed. Each day thereafter that the nuisance is not removed, a fine of twenty-five (25) dollars for each day will be imposed.
2. An order to abate the nuisance.

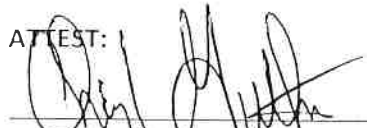
If the owner fails, neglects, or refuses to comply with the notice to abate a grass or weeds nuisance, the enforcing official shall cause the cutting of the offending grass or weeds. The City shall have a lien against the subject property for the cost of abating the nuisance and all expenses to collect such lien or charges for expenses of collection including the charging of said amount as a tax against the subject property.

EMERGENCY CLAUSE. The City Council hereby determines that this Ordinance is necessary for the provision of a safe and proper environment within developments in the City of Diamond City. Therefore, an emergency is declared to exist, and this Ordinance being immediately necessary for the preservation and protection of the public peace, health, safety and welfare of the City and its citizens, shall become effective on the date of its passage and approval by the Mayor. If the Ordinance is neither approved nor vetoed by the Mayor, it shall become effective on the expiration of the period of time during which the Mayor may veto the ordinance enacting this Ordinance. If the Ordinance is vetoed by the Mayor and the veto is overridden by the City Council, it shall become effective on the date the City Council overrides the veto.

ADOPTED by a roll call vote of:

4 Ayes; 2 nays; 0 abstentions 1 absentees, this 18th day of July 2011.

ATTEST:


Cheryl Guthrie, Recorder/Treasurer

APPROVED:


Shari L. Marshall, Mayor

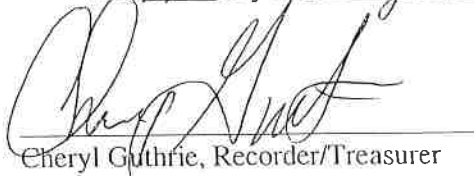
PROOF OF POSTING OF ORDINANCE

STATE OF ARKANSAS

COUNTY OF BOONE

We, Shari Marshall and Cheryl Guthrie, do solemnly swear that as Mayor and City Recorder/Treasurer, respectively, of and for the City of Diamond City, Boone County, Arkansas, that a certified copy of Ordinance No. 10 - 11 was, on the 19th day of July, 2011, duly posted in five separate and distinct places inside the corporate limits of the Town in accordance with Ordinance No. 03 - 10 of the City, and that the above listed Ordinance remains posted for thirty (30) days.

Dated this 19th day of August, 2011.


Cheryl Guthrie, Recorder/Treasurer


Shari Marshall, Mayor

