

ORDINANCE NO. 2017-02

AN ORDINANCE PROVIDING FOR THE CONDEMNATION AND REMOVAL OF PROPERTY, HOUSES, BUILDINGS, AND STRUCTURES WHICH ARE DILAPIDATED, UNSIGHTLY, UNSAFE, UNSANITARY, OBNOXIOUS, OR DETRIMENTAL TO THE PUBLIC WELFARE; WHICH CONTAIN WEEDS, GARBAGE, RUBBISH, AND OTHER UNSIGHTLY AND UNSANITARY ARTICLES UPON THE PROPERTY OR STAGNANT POOLS OF WATER OR ANY UNSANITARY THING, PLACE OR CONDITION; OR WHICH CONSTITUTE A NUISANCE WITHIN THE CORPORATE LIMITS; PROVIDING FOR A LIEN ON THE PROPERTY; AND FOR OTHER PURPOSES.

Whereas cities of the first class, cities of the second class, and incorporated towns may order the removal or razing of, or remove or raze, buildings or houses that the city council or town council believe to be dilapidated, unsightly, unsafe, unsanitary, obnoxious, or detrimental to the public welfare if they provide by ordinance the manner of removing and making those removals, Arkansas Code Annotated § 14-56-203;

Whereas incorporated towns and cities of the first and second class are empowered to order the owner of lots and other real property within their towns or cities to cut weeds; to remove garbage, rubbish, and other unsightly and unsanitary articles and things upon the property; and to eliminate, 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, after the town or city has provided therefor by an ordinance to that effect, Arkansas Code Annotated § 14-54-901;

Whereas if an owner or lienholder of any lot or other real property within an incorporated town or city neglects or refuses to remove, abate, or eliminate any condition under an ordinance passed by the city or town as provided in Ark. Code Ann. § 14-54-901, after seven days' written notice to do so, the city or town may do whatever is necessary to correct the condition and to charge the cost thereof to the owner of the lots or other real property;

Whereas a town or city is given a lien against the property for the costs, including all administrative and collection costs, if the lien is filed with the circuit clerk no later than one hundred twenty days after the town or city completes the clean-up work on the property, and a town or city may perfect its clean-up lien as a lien against the property if the property contains an unsafe and vacant structure, or has been cited as a weed lot, and the city gives notice to the landowner after the work is completed, Arkansas Code Annotated § 14-54-903(c)(1);

Whereas a city or town may secure a priority clean-up lien by providing seven business days' notice to lienholders of record before undertaking any work at the property, by providing a second notice to the owner and the lienholders of record, and by filing an action in the circuit court within which the property is located seeking a declaration that the clean-up lien is entitled to priority over previously recorded liens, which allows the city's clean-up lien to take priority over all other lienholders, Arkansas Code Annotated §§ 14-54-903(c)(7)(A) & (e)(1) & (j)(1);

Whereas the amount of any clean-up lien may be determined at a public hearing before the governing body of the city or town held after thirty days written notice by mail, return receipt requested, to the owner of the property and to the lienholders of record; and

Whereas a city has an inherent recognized authority to declare a building to be a nuisance, *McLean v. City of Fort Smith*, 185 Ark. 582, 48 S.W.2d 228 (1932);

The City Council of the City of Pleasant Plains, Arkansas, therefore ordains as follows:

1. It is unlawful for any person, entity, trust, partnership,

corporation, company, limited liability company, limited liability partnership, nonprofit corporation, association, or any other private owner of real property or any lienholder on that property to own, keep, maintain, or suffer and permit any property within the corporate limits of the City of Pleasant Plains, Arkansas, to contain any of the following conditions:

- (A) Buildings or houses that are dilapidated, unsightly, unsafe, unsanitary, obnoxious, or detrimental to the public welfare;
- (B) Weeds, garbage, rubbish, and other unsightly and unsanitary articles and things upon the property, or any 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; or
- (C) Any other condition that constitutes a nuisance.

2. The City of Pleasant Plains, Arkansas may determine there is reasonable cause to believe a property violates any part of this ordinance by passing a resolution by the City Council or by the issuance of a notice of

violation by the Mayor or his or her duly authorized agent or representative.

The resolution or notice of violation shall be in writing and include the following information:

- (A) A statement of the reasons for its issuance and the sections of this ordinance that are alleged to have been violated;
- (B) A time to remedy the alleged violations, not less than ten (10) business days;
- (C) The potential consequences for failing to remedy the alleged violations, including the imposition of a lien upon the property including all collection costs and lien amounts as provided by law, the sale of the property to satisfy those amounts, and all other remedies as provided by law and this ordinance;

3. Following the passage of the resolution finding reasonable cause or the issuance of a notice of violation, the City Council may consider a resolution declaring a property to violate this ordinance. Prior to the consideration of a resolution by the City Council declaring any property, house, building, or structure in violation of this ordinance, the owner and any

mortgagee or lienholder of record shall be mailed written notification of the date, time, and place that the City Council will consider that resolution. That written notice shall inform the owner and any mortgagee or lienholder of record of their opportunity to be heard at the City Council meeting on the proposed resolution declaring such property, house, building, or structure to be in violation of this ordinance. That notice shall inform the owner and any mortgage or lienholder of record that a lien may be imposed on the property which includes all collection costs and lien amounts as provided by law, that the property may be sold to satisfy those amounts, that lien may take priority over any prior recorded or unrecorded mortgage or lien, and that the City of Pleasant Plains, Arkansas may assert all of its lawful remedies against the property, house, building, or structure.

- (A) Should the owner, mortgagee, and lienholder of any such property, house, building, or structure be unknown, their whereabouts be unknown, or if they do not reside in Arkansas, then a copy of the written notice shall be posted upon the property, house, building, or structure and the Mayor or his designee shall make an affidavit setting out

the facts as to the unknown address, unknown whereabouts and non-resident status of the owner, mortgagee, and lienholder. After service of publication as provided by law against that unknown or non-resident defendant, an attorney ad litem shall be appointed to notify such persons by registered letter addressed to their last known place of residence or business.

(B) At its option, the City Council may proceed without notifying any recorded mortgagees and lienholders as otherwise required by this ordinance.

4. Any such property, house, building, or structure which is found and declared to be in violation of this ordinance by resolution of City Council shall be condemned to ensure the removal thereof or clean-up as provided in this ordinance.

5. The resolution of the City Council condemning any property, house, building, and structure for violating this ordinance shall include the following information in this paragraph.

- (A) The city's efforts to notify the owner;
- (B) An adequate description of the property, house, building, or structure;
- (C) the name, if known, of the owner, mortgagee, and lienholders for the property, house, building, or structure;
- (D) The reason or reasons that property, house, building, and structure is or has been condemned and found in violation of this ordinance; and
- (E) Empower the Mayor or his or her designee to take all further lawful actions necessary to bring the property, house, building, or structure into compliance with this ordinance.

6. After a property, house, building, or structure has been found and declared to be in violation of this ordinance and condemned by resolution as provided in this ordinance, a true or certified copy of that resolution will be mailed to each owner, recorded mortgagee, and recorded lienholder for the property, house, building, or structure, if the whereabouts or last known addresses of those persons or entities are known, and a copy thereof shall be

posted at a conspicuous place on said property, house, building, and structure. Provided that if the identity, location, or last known address of any owner, recorded mortgagee, or recorded lienholder of said property, house, building, or structure is unknown, the posting of the copy of said resolution as hereinabove provided will suffice as notice of the condemnation and finding of a violation of this ordinance.

7. If the property, house, building, and structure found to be violating this ordinance has not been remedied, torn down, removed, or otherwise abated in full within thirty (30) days after posting the true copy of the resolution at a conspicuous place on said property, house, building, or structure, then the property, house, building, and structure condemned and found in violation of this ordinance shall be brought into full compliance with this ordinance by the Mayor or his or her designee. This compliance may include the complete destruction and removal of the property, house, building, or structure, the removal of any garbage, the cutting of any nonconforming weeds or grass, the cleaning up or remedying of any other unsightly and unsanitary articles and things upon the property, the clearing or cleaning of 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, and all other actions necessary to remedy a condition that constitutes a nuisance.

8. The City shall have a lien against the property, building, house, or structure for its costs to bring the same into compliance with this ordinance.

This lien shall include all administrative and collection costs.

- (A) The City shall file a certified or true copy of the lien with the circuit clerk and in the land records identifying the amount of the lien and the property upon which the lien is asserted no later than one hundred twenty days after the City brings the property, building, house, or structure into full compliance with this ordinance, subject to subsection (C).
- (B) The City shall provide a second notice to the owner of the total amount of the lien.
- (C) At its option, the Mayor or his or her designee may schedule a public hearing before the city council to be held

after thirty (30) days' written notice by mail, return receipt requested, to the owner of the property, if its identity and address are known, and to the lienholders and mortgagees of record. If the name or address of the owner is unknown, then the public hearing must also follow publication of notice of the hearing in a newspaper having bona fide circulation in the county where the property is located for one insertion per week for four consecutive weeks. The decision confirming the lien amount shall be appealable to circuit court for forty-five (45) days after the amount is confirmed by the city council. After that time, the lien amount is fully perfected and not subject to attack. The City shall file a certified or true copy of the lien with the circuit clerk and in the land records identifying the amount of the lien and the property upon which the lien is asserted within sixty days after the lien amount is confirmed or after the City prevails in an appeal of that confirmation.

9. The Mayor or his or her designee may provide a second notice to

the lienholders of record of the total amount of the lien. This requirement is mandatory if the City's lien will take priority over prior recorded liens and mortgages. And the City shall initiate an action with the circuit court within which the property is located seeking a declaration that the clean-up lien is entitled to priority over previously recorded liens and mortgages and naming the holders of the recorded liens and mortgages as defendants before the lien can take priority over other recorded liens and mortgages.

10. Any lien under this ordinance may be enforced and collected at anytime within ten (10) years after a lien has been filed by a foreclosure action in circuit court by the City, which may include a ten percent penalty for collection pursuant to Arkansas Code Annotated § 14-54-904 and all other remedies available to the City; and all other title search fees and reasonable attorney's fees. Ark. Code Ann. § 14-54-904.

11. In the event it is deemed advisable by the City Council that a particular property, house, building, or structure be judicially declared to be a nuisance by a Court having jurisdiction of such matters, the City Council is hereby authorized to employ an attorney to bring such an action for said purpose in the name of the City.

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

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

14. **EFFECTIVE DATE WITH ORDINANCE LANGUAGE**

PASSED AND APPROVED THIS 12 DAY OF DECEMBER, 2017.


Kenneth Burns, Mayor


Clerk or Recorder