

ORDINANCE NO. 52

**AN ORDINANCE ADOPTING RULES GOVERNING UNSANITARY,
UNSIGHTLY, UNSAFE CONDITIONS ON PRIVATE PROPERTY; AND TO
DECLARE AN EMERGENCY AND FOR OTHER PURPOSES**

WHEREAS, there exist conditions on private property which are unsanitary, unsightly and unsafe; and

WHEREAS, there are statutes (e.g. Ark. Code Ann. §14-56-203 and Ark. Code Ann. §§14-54-901 et seq.) which empower a city of the second class to address such matters, but those statutes contemplate the adoption of an ordinance as to the manner and method of accomplishing the necessary end; and

WHEREAS, pursuant to Ark. Code Ann. §14-56-203, cities of the first and second class have the power to order the removal or razing of, or to remove or raze, any buildings or houses that in the opinion of the council have become dilapidated, unsightly, unsafe, unsanitary, obnoxious, or detrimental to the public welfare;

WHEREAS, pursuant to Ark. Code Ann. §§14-54-901 et seq., towns and cities have the power to force property owners and occupants to address unsightly, unsanitary, and unsafe conditions and if they do not, the City may act, obtain a lien for the expenses incurred and enforce such expenses.

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

SECTION 1. Definitions

The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned means that property to which no person claims or exercises the rights of ownership.

Appliances means, but is not limited to, refrigerators, deep freezes, stoves, ovens, air conditioners, washers, dryers, trash compactors, dishwashers, televisions, radios, hot water heaters, and plumbing fixtures.

Building material means, but is not limited to, items such as boards, bricks, cement, nails, pipe, sheet metal, siding, tar paper and windows which have never been incorporated into a

structure or which have been removed from a structure and may be readily incorporated into another structure. This ordinance applies only to building material which lies in public view and with respect to which its owner has no definite immediate plans for its use and which has remained unused for over one year.

Building rubbish means any post-construction solid waste which, because of its quantity, quality or condition, cannot be readily and immediately put to a beneficial use.

Dilapidated means the structure or building is in a state of disrepair and deterioration such that it has been neglected or misused and requires significant repair.

Garbage means all normal kitchen waste, such as vegetable and animal wastes and their by-products; but does not include sewage and human body wastes.

Inoperative means an item which, by mechanical or physical defect, can no longer be used for its intended purpose and which is not serving a functional purpose. Inoperative, when applied to motor vehicles, refers to any motor vehicle which inoperable, dismantled, damaged or is unable to start or move under its own power. A vehicle shall be presumed to be inoperative when any of the following conditions exist:

- a. It has not been moved for more than six months;
- b. Two or more tires are flat;
- c. One or more wheels are missing;
- d. The hood or trunk is raised or missing and has appeared to remain so for more than six months;
- e. Weeds or grass have grown up around the vehicle;
- f. The engine is missing;
- g. The door or doors, fender or fenders are removed or missing; and
- h. The front or rear windshield is broken, removed or missing, or the side windows are broken or removed or missing.

Motor vehicle means every device designed to be driven upon a public highway and in, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks or designed exclusively for farming operations.

Rubbish means, but is not limited to, paper, cans, bottles and empty food and drink containers.

Things include, but are not limited to, the following items: inoperative motor vehicles; inoperative household or commercial appliances; furniture; building materials; building rubbish; defective septic tanks; human or animal excrement; metal; plastic or paper containers; and does not include farm machinery.

Unsafe means that a place, condition, or thing exists in such a state that it puts citizens at risk, jeopardizes the public welfare, or is an attractive nuisance for children.

Unsanitary means that a place, condition or thing is unsanitary when it might become a breeding place for rodents, flies, mosquitoes and germs harmful to the health of the community.

Unightly means that a place, condition or thing is unsightly when it is in public view and offends the then-prevailing standard of the community as a whole, and not limited to a specific area, as to aesthetics or order.

SECTION 2: Clearance of unsightly or unsanitary conditions on real property.

A. Owners or occupants of real property within the corporate limits of the City are hereby required to remove garbage, rubbish, inoperative motor vehicles or other unsightly or unsanitary things.

B. It shall be unlawful for the owner or occupant of real property to permit the accumulation or development of garbage, rubbish, inoperative motor vehicles or other unsightly or unsanitary things or conditions on real property within the City.

C. It shall be unlawful for the owner or occupant of real property to permit any buildings or houses to become dilapidated, unsightly, unsafe, unsanitary, obnoxious, or detrimental to the public welfare.

SECTION 3. Removal, repair or razing of building or house; lien granted.

A. In any situation in which the City issues an order for the removal, repair to return the structure to compliance with minimum building code standards, or razing of a building or house under the provisions of Ark. Code Ann. § 14-54-903, a lien is granted and given against the real property for the cost of the removal, repair, or razing.

B. The lien granted by this subsection shall also be enforced pursuant to the lien enforcement procedures set forth in Ark. Code Ann. § 14-54-903, a lien is granted and given against the real property for the cost of the removal, repair or razing.

SECTION 4: Repairs competitive bidding required.

If the City determines to repair the building or house to meet the minimum building code standards, the City shall comply with all necessary requirements under Ark. Code Ann. §§ 14-58-303 for competitive bidding for purchases of supplies and materials or for contracts for work or labor needed to complete the repairs on the building or house.

SECTION 5: Lien against real property; notice of abandoned, inoperative vehicle.

A. If the owner or occupant of any real property within the corporate limits of the City neglects or refuses, after being given seven days' written notice by the City Marshal or Building Inspector or other person designated by the City Council, to remove, abate or eliminate any condition referred to in this ordinance, the City will do whatever is necessary to correct the condition and will charge the cost of the correction to the property owner to secure its costs; the City will perfect a lien against the affected property pursuant to Ark. Code Ann. § 14-54-901 et. seq.

B. Before any abandoned or inoperative motor vehicle is taken into custody and possession from private property, the City shall give the private property owner or occupant and the owner of the motor vehicle, if ascertainable, thirty (30) days notice by registered or certified mail that such action will be taken unless the motor vehicle is restored to a functional use, disposed of in a manner not prohibited by Ark. Code Ann. § 8-6-401, et. seq., or placed in an enclosed building. The 30 day notice may be waived by the owner or occupants of the property jointly and severally.

C. Any owner/occupant shall be presumed to have notice for the violation if the owner/ occupant has received notice of a similar type violation within the previous one year.

SECTION 6: Service of notice.

A. Owners or occupants of property in violation of this ordinance shall be notified in writing at their current or last-known address.

B. In case the owner of any lot or other real property is unknown or his whereabouts is not known or is a nonresident of this state, then a copy of the written notice shall be posted upon the premises. Before any action to enforce the lien shall be had, the City Recorder shall make an affidavit setting out the facts as to unknown address or whereabouts of nonresidents.

C. Thereupon, service of the publication, as provided for by law against nonresident defendants, may be had. An attorney ad litem shall be appointed to notify the defendant by registered letter addressed to his last known place of residence if it can be found.

D. Except as provided in subsection (b) of this section, notices required by this ordinance shall be published, mailed or delivered by the City Recorder or such other person as designated by the City Council.

SECTION 7: Enforcement of lien.

A. The lien provided for in Ark. Code Ann. § 14-54-903 may be enforced and collected in either one of the following manners:

1. At any time within 18 months after work has been done, by an action in

the circuit court; or

2. The amount of the lien may be determined at a hearing before the City Council held after 30 days' written notice by certified mail to the owner of the property if the name and whereabouts of the owner are known. If the name of the owner cannot be determined, then the amount will be determined only after publication of notice of the hearing in a newspaper having a bona fide circulation in the county where the property is located for one insertion per week for four consecutive weeks. The determination of the City Council is subject to appeal by the property owner in the circuit court. The amount so determined at the hearing, plus ten percent penalty for collection, shall be certified by the City to the tax collector of the county and placed on the tax books as delinquent taxes, and collected accordingly. The amount, less three percent thereof, when so collected shall be paid to the City by the county tax collector.

B. In all suits brought to enforce the liens described in this section, the reimbursement of costs, including title search fees and reasonable attorney's fees, shall be awarded to the municipality.

SECTION 8: Additional penalties.

In addition to any liens provided for in this ordinance, any violation of this ordinance by a property owner or person holding a possessory interest in the property, such as a leasehold tenant, are punishable by fine. Any person failing to comply with the provisions of this ordinance may be issued a citation and shall, upon conviction thereof, be punished by a fine not exceeding \$500.00, or double such sum for each repetition thereof. If the violation is, in its nature, continuous in respect to time, the penalty for allowing the continuance thereof is a fine not to exceed \$250 for each day that the violation is unlawfully continued.

SECTION 9. EMERGENCY CLAUSE: It is hereby declared that based on the conditions set forth herein, an emergency exists and this Ordinance, being necessary for the immediate protection of the health, safety, and welfare of the citizens of Goshen, Arkansas, shall be in effect immediately upon its passage, approval, and publication.

PASSED AND APPROVED this 11th day of January, 2005.

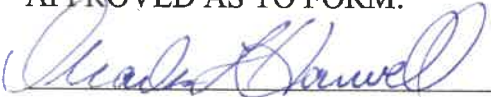


Andy Bethell, Mayor

ATTEST:


City Recorder

APPROVED AS TO FORM:



Charles Harwell, City Attorney

ROLL CALL

Names Of Those Voting YEA

Joe Benson
Jamie Boyd
Chuck Huskey
John Meek
Dick Seddon

Absent

Max Poye

Names Of Those Voting NAY