

ORDINANCE NO. 2020-16

AN ORDINANCE TO REPEAL AND REPLACE ORDINANCE 2005-06, AND DECLARING AN EMERGENCY TO PROVIDE CLARITY IN THE EXISTING ORDINANCES AND THE PRESERVATION OF PUBLIC PEACE, HEALTH AND SAFETY WITHIN OUR COMMERCIAL AND RESIDENTIAL NEIGHBORHOODS

WHEREAS the City of Pocahontas desires to promote a healthy environment and the continued safe compliance with all adopted ordinances regarding public nuisances within our commercial and residential neighborhoods.

BE IT ORDAINED BY THE CITY COUNCIL OF POCAHONTAS, ARKANSAS:

SECTION I: Definitions:

The following words, terms and phrases, when used in this article, 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, iceboxes, refrigerators, deep freezers, 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 article applies only to building material which lies in public view.

Building rubbish means any post construction solid waste.

Buffer Cut Area means cutting of the grass, weeds, brush, vines, etc., completely around the tract of land to at least a width of 150 feet.

Inoperable 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 is inoperable, dismantled, damaged or is unable to start or move under its own power. A vehicle shall be deemed to be inoperative when any of the following conditions exist:

- a. Two or more tires are flat.
- b. One or more wheels are missing.

- c. The hood is raised or missing and has appeared to remain so for more than three days.
- d. Weeds or grass have grown up around the vehicle.
- e. Major operating components are missing or in such damaged condition so as to make the motor vehicle useless. Major operating components include but may not be limited to: windshield glass, gauges, steering wheel, tie rods, springs, drive train, gear box, rear end, or any part connected with the steering geometry of the motor vehicle or the seats are removed.
- f. The vehicle has no current vehicle tags or registration.

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.

Large tract of land means any tract of land that is five acres and not a subdivision.

Motor vehicle means a self-propelled device that is required under the laws of the State of Arkansas to be licensed in order to be operated upon the public roadways.

Rubbish means brush, grass, leaves and other normal yard refuse, paper, cans, bottles and empty food and drink containers.

Subdivision means the division of a lot, tract, or parcel of land into two or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale or of building development.

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

Unsightly 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.

Weeds means any vegetation, lush or decayed, regardless of its beauty or utility and regardless of the fact that it might serve as a sanctuary for animals beneficial to man, which, because of its natural condition or lack of maintenance by the owner or occupant of the property, creates an unsightly condition thereon; Provided, this provision shall not include trees, shrubs or cultivated flowers and gardens.

SECTION II: Nuisances against public health.

It shall be a misdemeanor for any person, whether owner or tenant, to fail promptly to remove or abate any nuisance, source of foulness, offensive odors or cause of sickness hazardous to public health upon order of the code enforcement officer and/or Mayor.

SECTION III: Littering

No person within the City shall throw, discard, deposit or scatter upon any sidewalk, alley, street, bridge, public passageway, or other public thoroughfare, public park, or upon any private property owned by another person, any garbage, rubbish, appliances, building material, building rubbish, debris, trash, tires, furnishings, or any other waste product of any kind.

(a) It shall be unlawful for any person to drive or operate any vehicle of any kind or character upon any of the streets in the City, unless such vehicle is so constructed or loaded as to prevent any part of its load from dropping, sifting, leaking, spilling or otherwise escaping from said vehicle and onto the streets of the City.

SECTION IV: Violations.

Any person convicted of violating any section of this ordinance shall be subject to a fine as follows:

- (1) No less than \$100.00, nor more than \$500.00 for a first offense;
- (2) No less than \$250.00, nor more than \$500.00 for a second offense; and
- (3) No less than \$500.00 for a third offense.

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

(a) It shall be unlawful for the owner or occupant of real property to permit the accumulation, open storage, or development of garbage, rubbish, inoperative motor vehicle, appliances, building material, building rubbish, tires, dead or decaying limbs, source of foulness, offensive odors, cause of sickness hazardous to public health or other unsightly or unsanitary things or conditions on real property within the City.

Exception: As to inoperable motor vehicles as set out herein, this section does not apply to any inoperable motor vehicle held in conjunction with a business enterprise lawfully licensed by the City for the storage, servicing, or repair of motor vehicles so long as the property where the inoperative vehicle is located is in compliance with all City ordinances.

(b) It shall be unlawful for an owner or occupant of real property to fail to cut weeds and grass and plant growth as defined in this chapter. The owner or occupant of said property shall not allow weeds or plant growth over 12 inches in height.

1. *Exception: Large tracts of land* - Buffer Cut Areas shall be allowed to be cut around any large tract of land that is not a subdivision provided, however, that if the tract of land is shown to be a danger to the public peace, health and safety, the entire tract will be cut. This section does not apply to areas defined by Section 2(c) below.

2. *Exception: Cultivated land-* All lands within the City limits cultivated to growing crops shall be exempt from this section, but only the area actually cultivated is appraised to be growing crops.

(c) Large Tracts of Land located in areas zoned C-1, C-2, I-1 and I-A shall not be exempt from the enforcement of Section V(b).

SECTION VI: Statement of costs.

The code enforcement officer or Mayor, acting on behalf of the City is authorized to assess the actual cost of the work involved in correcting the conditions and is to be in addition to any fines imposed by the district court.

SECTION VII: 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 (7) days written notice by the police department or code enforcement officers of the City, to remove, abate or eliminate any condition referred to in violation of 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 A.C.A. § 14-54-903 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, 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 A.C.A. § 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 of overgrown grass or weeds if the owner/occupant has received notice of same violation within the same calendar year.

SECTION VIII: Service of notice.

(a) Owners of property in violation of this article 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 Clerk 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 article shall be published, mailed or delivered by the City Clerk or such other person as designated by the City Council.

SECTION IX: Enforcement of lien.

(a) The lien provided for in A.C.A. § 14-54-903 may be enforced and collected as provided in A.C.A. §14-54-904.

SECTION X: Additional penalties.

In addition to any liens provided for in this article, any violation of this Ordinance by a property owner and/or person holding a possessory interest in the property, such as a leasehold tenant, are punishable by those penalties prescribed this Ordinance.

SECTION XI: That the following listed ordinance is repealed: 2005-06

SECTION XII: All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION XIII: Emergency Clause

It is further found that due to the immediate need to provide clarity to the existing ordinances, an emergency is declared to exist and this ordinance being necessary for the preservation of the public peace, health and safety, shall take effect from and after its passage and approval.

Passed and approved this 17th day of November, 2020

APPROVED:



KEITH SUTTON
MAYOR OF POCAHONTAS

ATTEST:



SUZANNE HAWKINS, CITY CLERK

