

ORDINANCE NO. 2008-10

AN ORDINANCE PERTAINING TO MAINTENANCE OF REAL PROPERTY AND PROVISIONS FOR ABATEMENT OF NUISANCE PROPERTIES OR STRUCTURES WITHIN THE CITY LIMITS OF THE CITY OF COTTER, ARKANSAS

WHEREAS, Arkansas State Statute §14-54-901 states that incorporated cities of the second class are empowered to order the owner of lots and other real property within the city limits 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; and,

WHEREAS, there exists within the city limits several properties that have remained a continual nuisance for numerous years and persist in the cycle of code enforcement; and, those properties persisting in the cycle of code enforcement cause perpetual use of city funds; and, the number of nuisance properties continues to increase annually; and,

WHEREAS, Arkansas Code Annotated §§ 14-54-901 through 14-54-904 with §14-54-903 being amended by Act 854 grants cities additional tools to deal with criminal, nuisance and vacant properties; and

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

SECTION 1. GENERAL INTENT AND PURPOSE: The intent of this Ordinance is to protect the public health, safety and welfare of the residents of Cotter, Arkansas with regard to non-wooded residential and nonresidential properties within the city limits of Cotter by establishing minimum property maintenance requirements and standards to prevent blight, crime and disease, to preserve property values, to increase public confidence in safety, to increase tourism, to facilitate the basic rights of adjacent property owners and citizens to enjoy their surroundings, to fix the responsibility of owners and occupants and to provide for administration, enforcement and penalties.

SECTION 2. INTERPRETATION: This ordinance shall be construed liberally and justly to insure public health, safety and welfare insofar as they are affected by the continual use and maintenance of residential and nonresidential properties.

SECTION 3. DEFINITIONS:

Code Official: Any person employed on a full time basis with the City of Cotter Building Inspection Department, Police Department or Fire Department with the authority to issue noncompliance citations.

Property: For the intent and purpose of this ordinance, "property" or "properties" shall be defined as any non-wooded lot or parcel and its existing structures or buildings whether residential, commercial or industrial.

Owners, Occupants: Any person(s), whether owner(s) or occupant(s) under a lease agreement, shall be responsible for the care, maintenance and upkeep of the property owned or occupied.

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Unlawful Structure: A structure found in whole or in part to be a harbor for criminal activity, or one that constitutes a blighting problem due to a consistent lack of regular property maintenance, or is in such a structural state that the building constitutes a danger to anyone in, on or near said structure.

Nuisance Property: A nuisance property is one that unreasonably interferes with the use and enjoyment of lands of another, including the use of a structure which disturbs the peaceful, quiet, undisturbed use and enjoyment of nearby property. The definition of nuisance property shall also include but not be limited to, those properties found to be dilapidated, unsightly, unsafe, unsanitary, obnoxious, unfit for human occupancy, unlawful or detrimental to the public welfare.

Unsightly property: Any non-wooded residential, commercial or industrial lot, business, residential yard property within the city limits of Cotter that allows weeds or grass to grow over 12 inches high, Unsightly properties shall include those allowing bagged or un-bagged trash, garbage or refuse of any kind to accumulate on the premises. Unsightly properties shall include those allowing overgrown vegetation or conditions to exist that would have a potential to cause rat infestation or other vermin to occupy and breed on the property thereby causing infestation to spread to neighboring properties, Unsightly properties shall include those allowing inoperable, wrecked, or "junked" vehicles, or vehicles on blocks, to remain on the property. Unsightly properties shall include those allowing non-trash items of any kind to accumulate on and around the premises, including but not limited to appliances, furniture or other household items.

Unsafe Property: An unsafe property is one in which all or part of the premises thereof is found to be dangerous to life, health, property, or the safety of the public or the occupants of the structure due to a state of non-repair, damage, decay, dilapidation, trash or fire hazard of such faulty construction or unstable foundation that would make the structure unsafe with partial or complete collapse likely.

Unsanitary Property: An unsanitary property is one in which the condition of the premises allows for infestation by rodents, vermin, pestiferous insects, mosquitoes or flies, An unsanitary property will include, but not be limited to, those allowing stagnant pools of water causing the breeding of mosquitoes.

Unfit for Human Occupancy: A Structure is unfit for human occupancy or use whenever the Code Official determines that such structure is unsafe, unlawful or because of the degree in which the structure is in disrepair or lacks maintenance, is unsanitary, vermin or rat infested, contains filth and contamination or lacks water and sewer service or other utility services making the structure a hazard,

Unsafe Equipment: Equipment that is unsafe means any machinery that no longer functions in a manner consistent with its make and is openly and obviously displayed on property within the city limits.

SECTION 4. MINIMUM PROPERTY MAINTENANCE REQUIREMENTS AND STANDARDS: Properties and structures: It shall be unlawful for any person to keep, own or maintain any property, house, building, or other structure within the corporate limits of the City of Cotter that constitutes a nuisance or that is unsightly, unsanitary, unsafe, unlawful or unfit for human occupancy, Property owners/occupants shall be held responsible for compliance to this Ordinance as follows:

1. Any equipment that is unsafe, inoperative, unfit for human use, or unlawful shall not be kept, owned or displayed on properties.
2. All accessory structures, including but not limited to detached garages, fences and walls shall be kept in good repair and free from vines or other vegetation that may grow into or onto an adjoining property,
3. A vacant structure unfit for human habitation, occupancy or use shall not be allowed to remain standing.

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4. Long-term offensive odors to emanate from the property that unreasonably interfere with the ordinary use and enjoyment of neighboring property owners' land shall not be permitted. This excludes naturally occurring odors beyond the control of the property owner.
5. Premises and exterior property shall be kept free from all used or dismantled household appliances, furniture, vehicle parts, discarded personal property, garbage, junk, scrap, or refuse excepting those structures in building, remodeling or demolition process.
6. Unregistered, dismantled, inoperable, untagged, or stripped vehicles shall not be kept or stored outside on any premises, commercial or residential and will be enforced in accordance with existing ordinances of the City of Cotter.
7. All structures and exterior property shall be kept clean and sanitary and free from vermin infestation.
8. Stagnant water shall not be permitted. This provision shall not apply to private lakes or ponds.
9. Weeds, grasses or other vegetation growth exceeding twelve (12) inches shall not be permitted. This provision shall not apply to ornamental trees, shrubs and flowers.
10. Nothing contained herein shall be interpreted or construed to prevent a person from using acreage for pastureland, wooded lots or for cutting of hay. Hay acreage shall be cut by June 30th and October 15th.

SECTION 6. ENFORCEMENT: Any tenant and/or owner of real property within the City of Cotter, Arkansas whose property violates this Ordinance shall be notified of the violation by the City of Cotter and shall be given seven (7) days notice to correct the Ordinance violation. Said notice shall be sent by regular and certified mail and shall be sent to the following:

- a) The occupant, if any, of the property, with notice sent to the physical address of the property;
- b) The owner of the property, with notice sent to the owner's address of record at the Office of Baxter County Collector; and
- c) Any lien holders of the property as reflected in the Office of the Clerk and Ex-Officio Recorder for Baxter County, Arkansas.

Refusal of Owner to Comply:

If the owner, occupant or lien holder shall, after being sent notice as provided hereinabove, shall neglect or refuse to remove, abate or eliminate any condition as may be provided for in this Ordinance or fails to correct the Ordinance violation, then the City may take any and all action necessary to correct the Ordinance violation, and shall charge the costs thereof to the owner of the real property. As used herein, the term "costs" shall include the actual cost to correct the Ordinance violation, as well as any administrative and collection costs incurred by the City. The City shall be entitled to a lien against the property for all such costs, provided that the lien shall be perfected, imposed and collected in the time and manner set forth in Arkansas Code Annotated §§14-54-903 and 14-54-904.

SECTION 7. PENALTIES: Any person in violation of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not less than \$50.00 nor more than \$100.00 per day. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense.

SECTION 8. INCONSISTENCIES REPEALED: All other ordinances or parts thereof in conflict herewith are hereby repealed.

SECTION 9. SEVERABILITY: Should any section, clause or paragraph of this Ordinance be declared by court of competent jurisdiction to be invalid, the same will not affect the validity of the ordinance as a whole or part hereof other than the part declared to be invalid.

SECTION 10. SAVING CLAUSE: That nothing in this Ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

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SECTION 11. EMERGENCY CLAUSE: It is determined that this Ordinance is necessary and vital to the health, welfare and safety of the citizens of the City of Cotter; therefore, an emergency is hereby declared to exist and this ordinance shall be in full force and effect from and after its passage.

PASSED AND APPROVED THIS 18th DAY OF December, 2008.



DAVID McNAIR, MAYOR

ATTEST:



PEGGY HAMMACK, CITY RECORDER

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