

Term/Cashier: CASH4/S.JOHNSON
09/11/2008 1:27:16PM
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Total Fees: \$30.00
Book 2008 Page 35810
Recorded in the Above
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09/11/2008

ORDINANCE NO. 80

**AN ORDINANCE ESTABLISHING REGULATIONS
CONCERNING UNSIGHTLY AND UNSANITARY
CONDITIONS; PROVIDING FOR THE MANNER OF
ABATEMENT OF THOSE CONDITIONS; REPEALING
ORDINANCE NO. 54; DECLARING AN EMERGENCY;
AND FOR OTHER PURPOSES.**

WHEREAS; the Town desires to update its regulations pertaining to unsightly and unsanitary conditions within the Town limits of Avoca.

NOW, THEREFORE, be it ordained by the Council of the Town of Avoca, Arkansas:

SECTION 1: Definitions. As used in this Ordinance:

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

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

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

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

(b) Appliances shall mean, but are not limited to, refrigerators, deep freezers, stoves, ovens, air conditioners, washers, dryers, trash compactors, dishwashers, televisions, radios, water heaters and plumbing fixtures.

(c) Building material shall mean, 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 and with respect to which its owner has no definite immediate plans for its use.

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

(e) Inoperative refers to 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.

(f) Motor vehicle shall mean every device capable of being moved upon a public way and in, upon or by which any person or property is or may be transported or drawn upon a public way, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(g) Junk motor vehicle shall mean any motor vehicle which is inoperable, dismantled, or damaged and that is unable to start and move under its own power. Vehicles are excluded as long as they are registered and bear a current license permit.

(h) Unsanitary shall mean 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.

(i) Unsightly shall mean 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.

(j) Weeds shall mean 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 its owner, harms or threatens the health and safety of the community because of the rubbish accumulated within it or because it has become a sanctuary for animals or insects (rats and mosquitoes, for example) known to be carriers of filth and disease.

SECTION 2: Clearance of Unsightly and Unsanitary Conditions on Real Property.

(a) All owners of lots or other real property within the corporate limits of the Town are hereby required to cut grass, weeds and brush; remove all brush, limbs, leaves, logs, trash, garbage, rubbish and debris; remove any abandoned or junk motor vehicle, construction, industrial or farm equipment; remove any abandoned or inoperative household or commercial appliance, abandoned furniture, building materials, building rubbish, defective septic tanks, human or animal excrement and metal, plastic and paper containers; and eliminate, fill up or remove stagnant pools of water or other liquids or any other unsanitary thing, place or condition upon their real property. It shall be unlawful for the owner or occupant of real property to permit the accumulation or development of any of the foregoing things or conditions within the Town limits. Failure to comply with this section shall constitute a nuisance.

(b) The initial determination of what condition or thing constitutes an unsightly and unsanitary condition must be made by at least two of the following individuals: The mayor, health officer, fire chief, assistant fire chief, city inspector, or council member. It is not necessary that all of the named individuals participate in the determination.

SECTION 3: Notice

(a) Any owner of a lot or other real property within the corporate limits of the Town who fails to comply with Section 2 will be notified of such failure and the resultant nuisance, in writing. Such writing shall specify the nuisance existing and indicate the abatement or removal required. In addition, it shall state the action which the Town may take in the event the owner fails or refuses to remove or abate the nuisance. Notice shall also be sent to any lienholders of record for the property. Notice to lienholders shall be sufficient if the notice is sent to the lienholder's address shown in relevant land records. All notices shall be sent both regular mail and certified mail, return receipt requested.

(b) In the event personal written notice cannot be made upon the owner or the owner is unknown or his whereabouts is unknown or if such owner is a non-resident of the state, a copy of the written notice shall be posted upon the premises, and the Town Clerk or Recorder shall make an affidavit setting out the facts as to the unknown address or whereabouts or nonresidence; and, thereupon, service by publication, as now provided by Arkansas law against non-resident defendants may be had and an attorney ad litem shall be appointed to notify the defendant by certified letter addressed to his last known place of residence, if same can be found.

SECTION 4: Clearance by Town Upon Refusal by Owner; Costs.

(a) In the event the owner of a lot or other real property within the corporate limits of the Town neglects or refuses after having been given notice as required in Section 3 (a) and (b) above to comply with said notice within seven (7) days after service thereof, the Town shall do whatever is necessary to correct the condition and shall charge the cost of the correction to the property owner and the Town will claim a lien against the affected property pursuant to Ark. Code Ann. Section 14-54-903, *et seq.*

(b) Provided, however, that before any abandoned or junk motor vehicle is taken into custody and possession from private property, the Town shall give the owner of the property and the owner of the motor vehicle, if ascertainable, thirty (30) days' notice in the same manner as set out in Section 3(a) and (b) of this ordinance, or seventy-two (72) hours actual delivery of the notice to the person to whom it is directed that such an action will be taken unless the motor vehicle is restored to functional use, disposed of in a manner not prohibited by Ark. Code Ann. Section 8-6-401 - 8-6-417, or placed in an enclosed building. The thirty days' or seventy-two hours' notice may be waived by the owners of the property.

SECTION 5: Imminent Health or Safety Hazard

(a) Whenever a real and imminent health or safety hazard stemming from a condition or thing described in Section 2 exists and it is determined that the notice provisions provided for in Section 3 (a) and (b) cannot be complied with without jeopardizing the health and safety of the community, the Town shall give notice as is practical under the circumstances to the affected property owner (real and personal). If the property owner does not act immediately to correct the condition or thing complained of, the Town shall, pursuant to Ark. Code Ann. Section 14-54-103, do whatever is necessary to abate the hazard stemming from the condition or thing.

(b) The initial determination of what condition or thing constitutes a real and imminent health or safety hazard must be made by at least two of the following individuals: The mayor, health officer, fire chief, assistant fire chief, city inspector, or council member. It is not necessary that all of the named individuals participate in the determination.

(c) Provided further, however, that upon written application of two or more of the individuals described in subsection 5(b), the city attorney is authorized to immediately seek a temporary restraining order or preliminary injunction regarding the condition or thing complained of.

BOOK 2008 PAGE 0035813
Recorded in the Above
DEED Book & Page
09/11/2008

Benton County, AR
I certify this instrument was filed on
09/11/2008 1:27:30PM
and recorded in DEED Book
2008 at pages 0035810 - 0035813
Brenda DeShields-Circuit Clerk

SECTION 6: Exceptions.

Nothing in this Ordinance shall prohibit use and maintenance of ponds for watering livestock. Furthermore, the growing of hay, and certain other grasses, on farm acreage, will be necessary and for the purpose of this ordinance "farm acreage" shall be defined as any tract of land consisting of two (2) acres or more that is regularly used in support of or for farming operations.

SECTION 7: Punishment.

Any violation of this Ordinance shall be deemed a misdemeanor and any person convicted for a violation of this Ordinance shall be fined in a sum not less than Twenty-Five Dollars (\$25.00) nor more than Five Hundred Dollars (\$500.00) and/or imprisoned for a term not to exceed thirty (30) days. If the violation is continuous in nature, the fine shall not be less than Twenty-Five Dollars (\$25.00) nor more than Two Hundred Fifty Dollars (\$250.00) for each day the violation continues.

SECTION 8: Repeal.

Ordinance No. 54 is hereby repealed and all other ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION 9: Emergency.

The Town Council has determined that the passage and approval of the Ordinance is necessary for the continued health, welfare and safety of the citizens of the Town of Avoca, Arkansas, and an emergency is hereby found to exist and this Ordinance shall be in full force and effect from and after its passage, approval and publication.

PASSED AND APPROVED this 9th day of September, 2008

APPROVED:

Thomas W. O'Dell

THOMAS O'DELL, MAYOR

ATTEST:

Diane Bowen
DIANE BOWEN, RECORDER