

**ORDINANCE NO. 2012-30**

**AN ORDINANCE OF THE CITY OF BRYANT, ARKANSAS REPEALING ORDINANCE NO. 2005-13 AND FOR THE CLEARANCE OF UNSIGHTLY AND UNSANITARY CONDITIONS OF REAL PROPERTY AND DESCRIBING THE PROCESS TO ESTABLISH A CLEAN-UP PRIORITY LIEN AND FOR OTHER PURPOSES.**

**WHEREAS**, it is to the benefit of the citizens of the City of Bryant to live within an area free of unsightly and unsanitary conditions; and

**WHEREAS**, it is the duty of the City to protect the health and welfare of its citizens.

**WHEREAS**, Ordinance No. 2005-13 should be repealed and replaced with the following:

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRYANT, SALINE COUNTY, ARKANSAS:**

**SECTION 1:** Ordinance No. 2005-13 is hereby repealed.

**SECTION 2:** It may become necessary to order the Owner, the Occupant, or Lien Holders of lots and other real property within the city limits to cut weeds, remove garbage, rubbish and other unsightly and unsanitary articles and things; remove junked or abandoned motor vehicles and non-working appliances; 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 mosquitos, flies and germs harmful to the health of the community after it has been ascertained by proper investigation that such condition actually exists.

- A. If the Owner, Occupant or Lien Holder of any lot or other real property within the City of Bryant shall neglect or refuse to remove, abate or eliminate any such conditions described in

Section 2 above, after having been given 7 days to do so by written notice, then the City may do whatever is necessary to correct the condition and to charge the costs thereof to the Owner of the lot or other real property or to pursue any remedies in law for a lien on the property against all other lien holders of the lot or real property.

- a. The City shall file a lien with the circuit clerk no later than one hundred twenty days (120) days after the City completes the clean-up work on the lot or real estate.
- b. Written notice shall be provided by the following methods:
  - i. Owner's Notice: Notice shall be sent by both regular mail and certified mail, return receipt requested, to the Owner's address of record on file with the county treasurer or collector, if Owner is not the Occupant of the lot or real property.
    1. In the event Owner is unknown or a nonresident, then the provisions of Arkansas Code Ann. § 14-54-902 will be followed.
  - ii. Occupant's Notice: Notice may be served on an occupant of the lot or real property by personal service anywhere in the state or by mailing by regular mail and certified mail, return receipt requested.
  - iii. Lien Holder's Notice: Notice shall be sent by regular mail and certified mail, return receipt requested, to the Lien Holder's address shown on the relevant land records.
- c. Notice described above may be issued by:
  - i. Police officer employed by the City;
  - ii. City or Staff Attorney representing the City; and/or
  - iii. Code enforcement officer employed by the City.
- d. Notice will describe the conditions for which the Notice is being issued and will describe the time limits for the Owner, Occupant, or Lien Holder to remedy the condition(s) before

the City takes action to remedy the conditions unilaterally, pursuant to Arkansas Code Ann. § 14-54-901 et. seq.

i. The Notice shall describe the work to be performed by the City to establish a "Priority Clean-up Lien." A Priority Clean-up Lien is a clean-up lien for work undertaken by the City on an unsafe and vacant structure or weed lot that is given priority status over other lienholders following Notice described above and hearing described below.

1. An "unsafe and vacant structure" or an "abandoned home" or "residential property" means:

a. A structure located on previously platted and subdivided property that is not fit for human habitation and has been declared unsafe by Code Enforcement and vacant by the city in which it is located in violation of applicable ordinance; or

b. A home or residential property that is:

i. Unoccupied; and

ii. In violation of city safety standard.

2. A "Weed Lot" means a previously platted and subdivided lot that is vacant or upon which an unsafe and vacant structure is located and that contains debris, rubbish, or grass which is higher than that permitted by City Ordinances.

B. To perfect any lien for the work performed by the City on the Lot or Real Property the following steps shall be completed:

a. After completing the clean-up work the City shall provide a second notice to the lienholders of record of the total amount of the clean-up lien.

- b. This second notice shall be combined with a Notice of Hearing before the City Council for the City of Bryant to determine the final amount of the clean-up lien. The Second Notice shall be given by mail, return receipt requested, to the owner of the property if the name and address is known and to the lienholders of record. This Second Notice shall provide 30 days written notice of the hearing before the City Council.
    - i. In the event the owner of the property cannot be determined, then the clean-up lien shall be determined at a public hearing before the City Council 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 (1) insertion per week for four (4) consecutive weeks.
  - c. The City shall file its lien with the circuit clerk no later than sixty (60) days after the City Council confirms the lien amount.
- C. To Collect on and enforce a Priority Clean-up Lien, the following shall occur:
- a. The City shall file a declaratory judgment action in the Circuit Court to declare that the Clean-up Lien created herein has priority over previously recorded liens and the action shall name the holders of recorded liens as defendants in the action.
  - b. The City may enforce and collect at any time within ten (10) years after a lien has been filed in either one (1) of the following manners:
    - i. By an action for foreclosure in the circuit court by the city or town;
    - ii. The amount so determined at the hearing, plus ten (10%) penalty for collection, shall be certified by the City Council to the tax collector of the county to be

placed by him or her on the tax books as delinquent taxes and collected accordingly. The amount, less three (3%) thereof, when so collected shall be paid to the City by the tax collector.

- c. In all suits brought to enforce the liens described herein, the reimbursement of costs, including title search fees and reasonable attorney's fees, are available to the City for recovery.

**SECTION 3:** Issuance of Summons:

- A. In the event the Owner occupies a lot or other real property that exists in violation of this Ordinance, the City may through a duly authorized officer, issue a summons to appear in Saline County District Court, Bryant Division, to the owner or occupant of the lot or real property, giving a day to appear in Court on the face of said summons for violations of City Ordinances.

**SECTION 4:** Violation of Ordinance:

- A. Violation of this ordinance shall be an unscheduled misdemeanor, which shall carry a fine of not more than \$100.00 plus costs, per occurrence. The Court may, at its option, make said fine a civil penalty to prevent a criminal conviction of the person charged with such violation of this ordinance. A condition to receiving a civil penalty shall require the party to correct said violation.
- B. Each day that a violation of this ordinance occurs shall be a separate violation subject to the fine listed above. However, a civil penalty shall only be available for the first occurrence or offense. If a summons is issued then no additional summons may be issued for the same violation alleged in the first summons, but the Court may hear testimony about the length of time such violation continued to determine the number of continuing

violations. A failure to appear and issuance of a warrant shall be deemed a final determination for purposes of this ordinance.

- C. The City may confirm, after notice and hearing, the amount of the District Court's fine and pursue it as a priority lien in any manner allowed under law.

**SECTION 5: Definitions:**

- A. Junked or abandoned automobile: Any motor vehicle incapable of starting or moving under its own power, or one damaged to the extent that it cannot be started or moved under its own power, or any vehicle incapable of being licensed under the laws of the State of Arkansas, or one that has not been moved for a period of one month (30 days), from its present position, or that has not been moved for one week (7 days) if parked on a city street or right-of-way.
- B. Uncut weeds: Grass or weeds which have grown to a height of more the six (6) inches when not being used as a pasture or for other agricultural purposes.
- C. Unsanitary: Any article which constitutes a health or safety hazard.
- D. Unsightly: Any non-working product which may be described as trash of no apparent value.

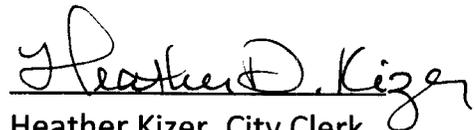
**SECTION 6: General Repealer and Severability**

All ordinances or parts of ordinances in conflict herein are repealed. Specifically Ordinance No. 2005-13. The provisions of this ordinance are hereby declared to be severable, and if any provisions shall for any reason be illegal or invalid, such holding shall not affect the validity of the remainder of this ordinance.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF BRYANT, ARKANSAS, on this 27<sup>th</sup> day of September, 2012**

  
Jill Dabbs, Mayor

ATTEST:

  
Heather Kizer, City Clerk

Prepared by:  
Office of Staff Attorney  
Chris Madison