



# **Legal Tools To Help Keep A City Clean**

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## Table of Contents

Legal Tools To Help Keep A City Clean . . . . .	4
Ark. Code Ann. § 14-54-901. Municipal authority. . . . .	4
Ark. Code Ann. § 14-54-902. Notice to unknown or non-resident owners.. . . .	4
Ark. Code Ann. § 14-54-903. Refusal of owner to comply. . . . .	4
Ark. Code Ann. § 14-54-904. Enforcement for lien of clearance. . . . .	6
Ark. Code Ann. § 14-54-905. Federal programs. . . . .	6
Ark. Code Ann. § 14-54-602. Drainage of property.. . . .	6
Case Law.. . . .	6
Nuisance Boards. . . . .	7
AN AGREEMENT. . . . .	7
Sample Ordinances . . . . .	8
ORDINANCE A. . . . .	9
ORDINANCE B . . . . .	10
ORDINANCE C. . . . .	10
ORDINANCE D. . . . .	11
ORDINANCE E . . . . .	11
ORDINANCE F . . . . .	12

## Legal Tools To Help Keep A City Clean

Arkansas towns and cities have very broad power to protect the public health. Ark. Code Ann. § 14-54-103 provides: “Cities and incorporated towns shall have power to (1) Prevent injury or annoyance within the limits of the municipal corporation from anything dangerous, offensive or unhealthy and to cause any nuisance to be abated within the jurisdiction given the Board of Health in [Ark. Code Ann.] § 14-262-102. Ark. Code Ann. § 14-262-102(b) (2) gives the Board of Health jurisdiction for one (1) mile beyond the city limits; and for quarantine purposes, in case of epidemic, five (5) miles.

Ark. Code Ann. § 14-55-102 provides: “Municipal corporations shall have [the] power to make and publish bylaws and ordinances, not inconsistent with the laws of this state, which, as to them, shall seem necessary to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of such corporations and the inhabitants thereof.”

### **Ark. Code Ann. § 14-54-901. Municipal authority.**

Incorporated towns and cities of the first and second class are empowered to order the owners of lots and other real property within their towns or cities 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, after the town or city has provided therefore by an ordinance to that effect.

### **Ark. Code Ann. § 14-54-902. Notice to unknown or non-resident owners.**

(a) (1) In case the owner of any lot or other real property is unknown or his or her whereabouts is not known or he or she is a nonresident of this state, then a copy of the written notice under § 14-54-903 shall be posted upon the premises. (2) Before any action to enforce the lien, the municipal recorder or the city clerk shall make an affidavit setting out the facts as to unknown address or whereabouts of nonresidents.

(b) (1) Thereupon, service of the publication as provided for by law against nonresident defendants may be had. (2) An attorney ad litem shall be appointed to notify the defendant by certified letter

addressed to his or her last known place of residence if it can be found.

(c) Except as provided in subsection (b) of this section, notices required by this subchapter shall be published, mailed, or delivered by the municipal recorder or the city clerk or other person as designated by the governing body of the municipality.

### **Ark. Code Ann. § 14-54-903. Refusal of owner to comply.**

Note: the following section was amended by Ark. Act 903, 88th Gen. Assembly, Reg. Sess. (2011).

(a) As used in this section:

(1) (A) “Clean-up lien” means a lien securing the cost of work undertaken by a town or city to remove, abate, or eliminate a condition in violation of local codes or ordinances.

(B) A clean-up lien may have priority against other lienholders as provided in this section;

(2) “Court lien” means a lien securing the fines or penalties imposed by a court of competent jurisdiction against the owner of an unsafe and vacant structure or weed lot for failure to comply with applicable building codes that have been secured by a court lien by action of the local governing body;

(3) “Priority clean-up lien” means a clean-up lien for work undertaken by a city or town on an unsafe and vacant structure or weed lot that is given priority status over other lienholders following notice and hearing;

(4) “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 and vacant by the city or town in which it is located in violation of applicable ordinance; or

(B) A home or residential property that is: (i) Unoccupied; (ii) In violation of a city safety standard; and (iii) Located in an area eligible for federal funds under § 14-54-905; and

(5) “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 local ordinance.

(b) If the owner or lienholder of any lot or other real property within an incorporated town or city neglects or refuses to remove, abate, or eliminate any condition under an ordinance passed by the city or town as provided in § 14-54-901, after having been

given seven (7) days' notice in writing to do so, then the town or city may do whatever is necessary to correct the condition and to charge the cost thereof to the owner of the lots or other real property.

(c) (1) The town or city is given a lien against the property for the costs, including all administrative and collection costs.

(2) The town or city shall file the lien with the circuit clerk no later than one hundred twenty (120) days after the town or city completes the clean-up work on the property.

(3) The town or city may perfect its clean-up lien as a lien against the property if the property:

(A) Contains an unsafe and vacant structure; or

(B) Has been cited as a weed lot.

(4) The clean-up lien amount shall equal costs, including administrative costs, that the city or town incurs to help bring the property into compliance with local ordinances because the owner or lienholder failed to remove or repair an unsafe and vacant structure or failed to correct the conditions that caused the property to become a weed lot within the time required by the notice.

(5) (A) If a court of competent jurisdiction levies fines or penalties against the owner of an unsafe and vacant structure or weed lot for failure to comply with applicable building codes, then the local governing body, by majority vote, from time to time, and subject to notice and hearing provided by this section, may secure any outstanding court fines or penalties resulting from the owner's failure to clean up an unsafe and vacant structure or weed lot with a court lien against the property for the full value of all the outstanding fines and penalties.

(B) A court lien does not have first priority status over prior, recorded liens and may be imposed in addition to clean up liens.

(6) (A) Notices shall be sent by regular mail and by certified mail, return receipt requested.

(B) Notice to an owner is sufficient if sent to the owner's address of record with the applicable county treasurer or collector.

(7) (A) If the city or town wishes to secure a priority clean-up lien, it shall provide seven (7) business days' notice to lienholders before undertaking any work at the property.

(B) Notice is sufficient if the notice is sent to the lienholder's address shown in the relevant land records.

(C) Cities and towns are not required to give notices to holders of unrecorded liens or to unrecorded assignees of lienholders.

(D) Any lienholder receiving notice under this section shall send, within seven (7) business days from receipt of the notice, a written response to the city or town indicating whether the owner of the property is in default under the terms of the note or mortgage.

(d) Any notice required under this section may be issued by a:

(1) Police officer employed by the city or town;

(2) City or town attorney; or

(3) Code enforcement officer employed by the city or town.

(e) (1) (A) After the work has been completed, the city or town shall provide second notice to the owner of the total amount of the clean-up lien, including administrative and filing costs.

(B) If the city or town wishes to secure a priority clean-up lien after the work has been completed, it shall provide second notice to the lienholders of record of the total amount of the clean-up lien.

(2) Cities and towns are not required to give notice of court liens to prior lienholders.

(3) Notice of the amount of a clean-up lien or a court lien may be combined with the notice of the hearing before the governing body to create and impose the clean-up or court lien.

(f) The amount of any clean-up lien or court lien provided in this section may be determined at a public hearing before the governing body of the city or town held after thirty (30) days' written notice by mail, return receipt requested, to the owner of the property if the name and address of the owner are known and to the lienholders of record.

(g) If the name of the owner cannot be determined, then the amount of the clean-up lien or court lien shall be determined at a public hearing before the governing body of the city or town 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.

(h) (1) The determination of the governing body confirming the amount of any clean-up lien or court lien and creating and imposing any clean-up lien or court lien under this section is subject to appeal by the property owner or by any lienholder of record

in the circuit court, filed within forty-five (45) days after the determination is made.

(2) If the owner or lienholder fails to appeal in this time, the lien amount is fully perfected and not subject to further contest or appeal.

(i) The city or town shall file its lien with the circuit clerk no later than sixty (60) days after the governing body of the city or town confirms the lien amount, or if the lien is appealed, within sixty (60) days after the city or town wins on appeal.

(j) (1) If the city or town wishes to secure a first-priority status for any priority clean-up lien created and imposed under this section, it shall file an action with the circuit court within which the property is located seeking a declaration that the clean-up lien is entitled to priority over previously recorded liens and naming the holders of the recorded liens as defendants.

(2) Priority status shall be awarded to the priority clean-up lien with respect to any previously recorded lien if the court determines that such lienholder has failed to exercise its rights to foreclose its lien when the obligation it secures becomes in default or has failed to pay the costs of work undertaken by a city or town that compose the clean-up lien. However, the amount as to which the clean-up lien shall have priority shall be the amount the court finds reasonable and, is limited to:

(A) No more than one thousand dollars (\$1,000) for grass or weed cutting;

(B) No more than five thousand dollars (\$5,000) to board and secure the property;

(C) No more than seven thousand five hundred dollars (\$7,500) to demolish any structures on the property; or

(D) No more than fifteen thousand dollars (\$15,000) for environmental remediation.

**Ark. Code Ann. § 14-54-904. Enforcement for lien of clearance.**

(a) The liens provided for in § 14-54-903 may be enforced and collected at any time within ten (10) years after the lien has been filed in either one (1) of the following manners:

(1) By an action for foreclosure in the circuit court by the city or town, or if the city or town has established a land bank, by a land bank that has been assigned the lien; or

(2)(A) The amount so determined at the hearing, plus ten percent (10%) penalty for collection, shall be certified by the governing body of the

municipality to the tax collector of the county where the municipality is located and placed by him or her on the tax books as delinquent taxes and collected accordingly.

(B) The amount, less three percent (3%) thereof, when so collected shall be paid to the municipality by the county tax collector.

**Ark. Code Ann. § 14-54-905. Federal programs.**

Note: the following section was created by Ark. Act 903, 88th Gen. Assembly, Reg. Sess. (2011).

An owner of an abandoned home or residential property that is located in a designated neighborhood stabilization or revitalization area may voluntarily participate in a United States Department of Housing and Urban Development's housing program if federal funds are available.

**Ark. Code Ann. § 14-54-602. Drainage of property.**

Municipal corporations shall have power to cause any lot of land within their limits to be raised up or drained on which or on part of which water shall at any time become stagnant, and to cause all putrid substance, whether animal or vegetable, to be removed from any lot or lots.

**Case Law.**

In *Springfield v. Little Rock*, 226 Ark. 462, 290 S.W.2d 620 (1956), the Arkansas Supreme Court held: Where preponderance of evidence was to effect that buildings in question were in a fire, health and structural hazard, decree of chancellor ordering their destruction under city ordinance enacted under the authority of these sections was proper and did not constitute a violation of owner's constitutional rights. Also, the city may order unsanitary buildings or buildings injurious to the public health destroyed without compensation to their owner if necessary to abate the nuisance and protect the public health and safety. *Springfield* has been upheld in a recent decision by the Arkansas Supreme Court. See *Skallerup v. City of Hot Springs*, 2009 Ark. 276, 309 S.W.3d 196 (2009).

Municipalities in Arkansas have vast powers to protect the public health and safety. The power to pick up garbage and refuse and charge a fee, therefore, is based on protection of the public health. See *Geurin v. Little Rock*, 203 Ark. 103, 155 S.W.2d 719 (1941). The City of Dierks was given the power to perform the service of fogging the city with insecticide and charging a sanitation fee of \$4.00 per year

on each dwelling and business. This was sustained in *Holman v. City of Dierks*, 217 Ark. 677, 233 S.W.2d 392 (1950). Moreover, the Arkansas Supreme Court has held that annual sanitation fees, similar to the fee enacted in *Dierks*, are fees for services to be rendered and not a tax, and, thus, their enactment is not subject to the same regulations as the enactment of a tax. See *Morningstar v. Bush*, 2011 Ark. 350, 383 S.W.3d 840 (2011).

### **Nuisance Boards.**

Cities of the first and second class are given the authority to establish boards, by ordinance, to hear complaints regarding places or premises used as public or common nuisance. Ark. Code Ann. §§ 14-54-1701, 14-54-1702 (statutes defining a public or common nuisance can be found at Ark. Code Ann. §§ 5-74-109, 14-54-1502, 16-105-402; the statute includes buildings that are used for prostitution under Ark. Code Ann. § 5-70-102). The board shall be composed of five (5) citizens of the creating city who shall be appointed by the governing body of the city. Ark. Code Ann. § 14-54-1702(b). All successors appointed to the board shall serve one (1) five year term. Ark. Code Ann. § 14-54-1702(d)(2). The boards may hear complaints, make determinations and impose fines. Ark. Code Ann. § 14-54-1703. Owners must be given ten (10) calendar days' written notice of the hearings. *Id.* Orders from the board may be appealed to the circuit court within 30 days after being enacted. Ark. Code Ann. § 14-54-1707(a). If appealed, the order will remain in effect, unless stayed by the circuit court. Ark. Code Ann. § 14-54-1707(b). If the public nuisance continues to exist, or an order has been violated, the board may impose a civil penalty of not more than Two Hundred Fifty Dollars (\$250.00) for each day that the order is violated or that the nuisance continues to exist with a maximum penalty of Ten Thousand Dollars (\$10,000.00). Ark. Code Ann. § 14-54-1708.

In addition to a civil penalty, the board may award costs of a successful complaint not to exceed one

thousand dollars (\$1,000.00). Ark. Code Ann. § 14-54-1708(f). Any order imposing costs or civil penalties not appealed to the circuit court may be filed with the Circuit Clerk's office and constitute a judgment of record and a lien against the nuisance property. Ark. Code Ann. § 14-54-1708(i).

### **AN AGREEMENT**

The following is an Agreement between the City of Pine Bluff and Jefferson County under the provisions of Ark. Code Ann. § 14-54-904.

1. To enable the Tax Collector to perform the requirements of Ark. Code Ann. § 14-54-903, the City agrees to perform the following:
  - A. To provide a form in triplicate to the County Tax Collector which lists the property owner, property description, corresponding school district, parcel number and total to be collected, and accrual date of the City Council. Said form shall have a cover listing the above information.
  - B. To provide said form between the tenth and fifteenth of each month. It is to be provided that no form shall be delivered to the county in the months of January, February and March of each year.
2. It is understood that once the above-mentioned form has been turned over to the county, the payment required must be made to the County Tax Collector.
3. County Tax Collectors are to collect the taxes under § 14-54-903 and the county shall pay the city funds collected less the three percent for cost of collection in the same manner of the distribution for other delinquent collections.
4. Any changes in this Agreement must be mutually agreed upon before they are binding to either party.

## Sample Ordinances

On the following pages are ordinances to (1) clean up vacant property and (2) provide for the condemnation of structures along with a form agreement between a city and county tax collector.

Municipalities may prohibit dumping of trash and refuse on streets. (See sample Ordinance B.)

Municipalities may require owners or occupants to keep street gutters and drains clean and free of obstructions. (See sample Ordinance C). Also, municipalities may require persons building private driveways over drains and public ditches to provide tile or other materials to allow continuous flow of water through ditches. (See sample Ordinance D.)

Municipalities may provide for mosquito, fly and insect control by fogging or other methods and may charge a fee therefore. Many cities add these charges on the water bill. (See sample Ordinance E.)

Municipalities may declare property that is dilapidated, unsightly, unsafe, unsanitary, obnoxious or detrimental to the public welfare to be a nuisance, and order it torn down and removed. Municipalities may fine the owner for not removing the nuisance or may order the proper city official to tear it down, or may refer the matter to the city attorney or an attorney employed by the city to have the property judicially declared to be a nuisance and then torn down. The city is entitled to a lien on the property for all costs expended. (See Ordinance F).



**ORDINANCE A**

AN ORDINANCE REQUIRING PREMISES TO BE KEPT FREE FROM WEEDS, RANK GRASS, GARBAGE, RUBBISH AND OTHER UNSIGHTLY AND UNSANITARY ARTICLES; REQUIRING PROPERTY OWNERS 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; PRESCRIBING A PROCEDURE TO BE FOLLOWED IN SUCH CASES.

BE IT ORDAINED BY THE CITY (OR TOWN) COUNCIL OF THE CITY (OR TOWN) OF \_\_\_\_\_, ARKANSAS:

SECTION 1. All property owners within the City (or town) of \_\_\_\_\_, Arkansas, are hereby required to cut weeds, grass, remove garbage, rubbish and other unsanitary and unsightly articles and things from their property, and to eliminate, fill up or remove stagnant pools of water or any other unsanitary things, place or condition which might become a breeding place for mosquitoes, flies and germs harmful to the health of the community. Weeds or grass allowed to grow over \_\_\_\_\_ inches high shall be deemed a violation of this section.

SECTION 2. If the owner or owners of any lot or other real property within the City (or town) of \_\_\_\_\_, after the giving of seven (7) days' notice in writing by (official authorized to do so), shall refuse or neglect to perform the duties in connection with his or their property as specified in section 1 hereof, the (City Marshal or Chief of Police) is hereby authorized to enter upon the property and have said weeds, rank grass or other vegetation cut and removed, or eliminate any unsanitary and unsightly condition, and the cost thereof shall be charged against said premises and shall constitute a lien thereon.

SECTION 3. In case the owner of any lot or other real property is unknown or his whereabouts is not known or is a non-resident of this State, then a copy of the written notice hereinabove referred to shall be posted upon the premises and before any action to enforce such lien shall be had, the (City Clerk or Recorder) shall make an affidavit setting out the facts as to unknown address or whereabouts of non-residents, and thereupon service of publication as now provided for by law against non-resident defendants may be had and an attorney ad litem shall be appointed to notify the defendant by registered letter addressed to his last known place of residence if same can be found.

SECTION 4. Enforcement of this ordinance shall be as provided in Ark. Code Ann. §§ 14-54-903 and 14-54-904.

SECTION 5. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

APPROVED: \_\_\_\_\_  
(Mayor)

DATED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
(City Clerk or Recorder)

**ORDINANCE B**

AN ORDINANCE PROHIBITING THE DUMPING OF TRASH OR REFUSE WITHIN THE CITY (OR TOWN) OF \_\_\_\_\_, ARKANSAS; PROVIDING A PENALTY THEREFOR, AND FOR OTHER PURPOSES.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY (OR TOWN) COUNCIL OF THE CITY (OR TOWN) OF \_\_\_\_\_, ARKANSAS:

SECTION 1. From and after the passage and approval of this ordinance it shall be unlawful for any person, firm or corporation to dump or throw any form of trash, refuse, cans, bottles, garbage, paper, rags or any other kind or form of trash or garbage upon the streets of the City (or Town) of \_\_\_\_\_, Arkansas.

SECTION 2. Any person, firm or corporation who shall violate the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1000.00).

SECTION 3. The City (or Town) Health Officer and/or the City (or Town) Marshal are hereby authorized to enforce the provisions of this ordinance.

SECTION 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

APPROVED: \_\_\_\_\_  
(Mayor)

DATED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
(City Clerk or Recorder)

**ORDINANCE C**

AN ORDINANCE REQUIRING OWNERS OR OCCUPANTS OF PREMISES ABUTTING ON STREETS TO KEEP THE STREET GUTTERS ALONGSIDE THEIR PREMISES CLEAR OF ALL MATTER PREVENTING THE FREE FLOW OF WATER THEREIN AND PROHIBITING OBSTRUCTIONS TO SUCH FLOW AND PRESCRIBING A PENALTY FOR ITS VIOLATION.

BE IT ORDAINED BY THE CITY (OR TOWN) COUNCIL OF \_\_\_\_\_, ARKANSAS:

SECTION 1. That the owner or owners, occupant or occupants of any block or lot or part of block or lot in the City (or Town) of \_\_\_\_\_, Arkansas, abutting on any gutter of any street of said city (or town) shall be and are hereby required to keep the said gutter or gutters upon which the premises owned or occupied by them may abut, clean and clear of all obstructions to the free flow of water therein, and any and all persons are hereby prohibited from depositing or permitting any deposit in any street, gutter or gutters of said city (or town), any matter or thing that will obstruct or cause to be obstructed the free flow of water therein, provided that nothing herein contained shall be so construed as to apply to obstructions caused by the natural flow of water.

SECTION 2. Any person violating the provisions of this ordinance shall upon conviction thereof in the City (or District) Court be adjudged guilty of a misdemeanor and shall be fined in any sum not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1000.00).

SECTION 3. This ordinance shall take effect and be in force from and after its passage.

APPROVED: \_\_\_\_\_  
(Mayor)

DATED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
(City Clerk or Recorder)

**ORDINANCE D**

AN ORDINANCE REQUIRING ANY PERSONS BUILDING A PRIVATE OR PUBLIC DRIVEWAY OVER ANY PUBLIC DITCH TO PROVIDE ADEQUATE MEANS BY TILE OR OTHER CONSTRUCTION, TO BE APPROVED BY THE STREET SUPERINTENDENT, TO ALLOW THE CONTINUED FLOW OF WATER THROUGH SAID DITCH; PROVIDING A PENALTY FOR VIOLATION HEREOF, AND FOR OTHER PURPOSES.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY (OR TOWN) COUNCIL OF THE CITY (OR TOWN) OF \_\_\_\_\_, ARKANSAS:

SECTION 1. That every person, firm or corporation constructing a driveway over any public ditch within the City (or town) of \_\_\_\_\_, Arkansas, shall provide some adequate means for the continued flow of water through said ditch; such opening shall be made by tile or other materials to be approved by the Street Superintendent of the City (or Town) of \_\_\_\_\_, Arkansas.

SECTION 2. Any person failing to comply with the provisions of this ordinance shall be deemed guilty of a misdemeanor and shall be punished upon conviction in any sum not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1000.00), and each day that said condition shall exist shall be considered a continuing offense subject to an additional fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) per day.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

APPROVED: \_\_\_\_\_  
(Mayor)

DATED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
(City Clerk or Recorder)

**ORDINANCE E**

AN ORDINANCE LEVYING A SANITATION FEE FOR MOSQUITO CONTROL; PRESCRIBING A PENALTY FOR ITS VIOLATION, AND FOR OTHER PURPOSES.

BE IT ORDAINED BY THE CITY (OR TOWN) COUNCIL OF THE CITY (OR TOWN) OF \_\_\_\_\_, ARKANSAS:

SECTION 1. All property owners, including individuals, firms and companies, within the city (or town) limits of the City (or town) of \_\_\_\_\_, Arkansas, will pay the sum of Twelve Dollars (\$12.00) per year sanitation fee on each dwelling and commercial building located in said city (or town).

SECTION 2. This fee will be paid to the City (or town) of \_\_\_\_\_ and is due not later than the \_\_\_\_\_ of May each year.

SECTION 3. Any person, firm or company violating any part of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined a sum not less than One Hundred Dollars (\$100.00) and not more than One Thousand Dollars (\$1000.00) for each dwelling or commercial building involved.

SECTION 4. All ordinances in conflict with this ordinance are hereby repealed.

APPROVED: \_\_\_\_\_  
(Mayor)

DATED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
(City Clerk or Recorder)

## ORDINANCE F

**Note:** Cities are granted authority to raze buildings by ark. Code ann. § 14-56-203. The lien provisions of the sample ordinance are supported by ark. Code ann. § 14-54-904.

Although a city council may declare a building a nuisance, it may do so only in circumstances that would lead a court or jury to find that the building is a nuisance. *McLean v. City of Ft. Smith*, 185 Ark. 582, 48 S.W.2d 228 (1932). To do otherwise will likely result in liability for violation of the rights of the property owner, mortgagees or lienholders.

Therefore, a city should raze or destroy a building only in the most severe circumstances involving danger to the public health or safety, and only with the advice of an attorney. Other less drastic measures, such as fines for building or fire code violations, should be explored first. If removal or destruction of the building is thought to be necessary, the city would be best protected from liability by seeking a prior declaration by a court that the building is a nuisance as provided in Section 10 of the sample ordinance.

Please note that this ordinance has been updated to reflect court decisions requiring that any mortgage and lien holders must be given notice and an opportunity for a hearing. If you have not updated your city's or town's ordinances to reflect these changes, you should do so in order to protect yourself against lawsuits.

AN ORDINANCE PROVIDING FOR THE CONDEMNATION AND REMOVAL OF HOUSES, BUILDINGS AND/OR STRUCTURES CONSTITUTING A NUISANCE WITHIN THE CORPORATE LIMITS; PROVIDING FOR A LIEN ON THE PROPERTY; PROVIDING A PENALTY THEREFOR, AND FOR OTHER PURPOSES.

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

SECTION 1. That it shall be and it is hereby declared to be unlawful for any person or persons, partnership, corporation or association, to own, keep or maintain any house, building and/or structure within the corporate limits of the City of \_\_\_\_\_, Arkansas, which constitutes a nuisance and which is found and declared to be a nuisance by Resolution of the City Council.

SECTION 2. That any such house, building and/or structure which is found and declared to be a nuisance by Resolution of the City Council will be condemned to insure the removal thereof as herein provided.

### SECTION 3.

(a) That prior to the consideration of a Resolution by the City Council declaring any house, building and/or structure as a nuisance, the owner(s) and any mortgagee(s) or lienholder(s), of such house, building and/or structure shall be mailed written notification of the date, time and place that the city Council will consider said Resolution. In addition, said notice shall inform the owner(s) and any mortgagee(s) or lienholder(s), of the right to be heard at the City Council meeting on the proposed Resolution declaring such house, building and/or structure to be a nuisance.

(b) Should the owner(s) and mortgagee(s) and/or lienholder(s) of any such house, building and/or structure be unknown or their whereabouts be unknown, or if they do not reside in Arkansas, then a copy of the written notice shall be posted upon said premises and the Mayor or his designee shall make an affidavit setting out the facts as to unknown address, unknown whereabouts and/or non-resident status of said owner(s), mortgagee(s), and lienholder(s). Thereupon, service of publication as now provided by law against unknown and/or non-resident defendant(s) may be had and an attorney ad litem shall be appointed to notify such persons by registered letter addressed to their last known place(s) of residence or business.

SECTION 4. That the Resolution of the City Council condemning any house, building and/or structure which constitutes a nuisance will include in said Resolution an adequate description of the house, building, and/or structure; the name(s), if known, of the owner(s) and mortgagee(s) and/or lienholder(s) thereof; and shall set forth the reason or reasons said house, building and/or structure is or has been condemned as a nuisance.

SECTION 5. After a house, building and/or structure has been found and declared to be a nuisance and condemned by Resolution as herein provided, a true or certified copy of said Resolution will be mailed to the owner(s) and mortgagee(s) and/or lienholder(s) thereof, if the whereabouts of said owner(s) and

mortgagee(s) and/or lienholder(s) thereof be known or their last known address be known, and a copy thereof shall be posted at a conspicuous place on said house, building and/or structure. Provided, that if the owner(s) and mortgagee(s) and/or lienholder(s) of said house, building and/or structure be unknown, or if his or their whereabouts or last known address be unknown, the posting of the copy of said resolution as hereinabove provided will suffice as notice of the condemnation.

SECTION 6. If the house, building and/or structure constituting a nuisance has not been torn down or removed, or said nuisance otherwise abated within thirty (30) days after posting the true copy of the Resolution at a conspicuous place on said house, building and/or structure constituting the nuisance, it will be torn down and/or removed by the Building Inspector or his duly-designated representative.

SECTION 7. The Building Inspector or any other person or persons designated by him to tear down and remove any such house, building and/or structure constituting a nuisance will insure the removal thereof and dispose of the same in such a manner as deemed appropriate in the circumstances and to that end may, if the same have a substantial value, sell said house, building and/or structure, or any saleable materials thereof, by public sale to the highest bidder for cash, ten (10) days' notice thereof being first given by one publication in some newspaper having a general circulation in the City, to insure its removal and the abatement of the nuisance.

SECTION 8. All proceeds of the sale of any such house, building and/or structure, or the proceeds of the sale of saleable materials therefrom and all fines collected from the provisions of this ordinance shall be paid by the person or persons collecting the same to the City Treasurer. If any such house, building and/or structure, or the saleable materials thereof, be sold for an amount which exceeds all costs incidental to the abatement of the nuisance (including the cleaning up of the premises) by the City, plus any fine or fines imposed, the balance thereof will be returned by the City Treasurer to the former owner or owners of such house, building and/or structure constituting the nuisance.

SECTION 9. If the City has any net costs in removal of any house, building or structure, the City shall have a lien on the property as provided by A.C.A. § 14-54-904.

SECTION 10. A fine of not less than Two Hundred Fifty Dollars (\$250.00) nor more than Thousand Dollars (\$1000.00) is hereby imposed against the owner(s) of any house, building and/or structure found and declared to be a nuisance by Resolution of the City Council thirty (30) days after the same has been so found and declared to be a nuisance, and for each day thereafter said nuisance be not abated constitutes a continuing offense punishable by a fine up to Five Hundred Dollars (\$500.00) per day; provided the notice as herein provided in Section 5 hereof has been given within ten (10) days after said house, building and/or structure has been by Resolution found and declared to be a nuisance.

SECTION 11. In the event it is deemed advisable by the City Council that a particular house, building and/or structure be judicially declared to be a nuisance by a Court having jurisdiction of such matters, the City Council is hereby authorized to employ an attorney to bring such an action for said purpose in the name of the City, and the only notice to be given to the owner(s) and mortgagee(s) and/or lienholder(s) of any such house, building and/or structure sought to be judicially declared to be a nuisance will be that as now provided for by law in such cases in a court of equity or Circuit Court. When any such house, building, and/or structure has been declared judicially to be a nuisance by a Court of competent jurisdiction, a fine up to One Thousand Dollars (\$1000.00) is hereby imposed against the owner(s) thereof from the date said finding is made by the Court and for each day thereafter, said nuisance be not abated constitutes a continuing offense punishable by a fine up to Five Hundred Dollars (\$500.00) per day.

SECTION 12. If, for any reason, any portion of this ordinance be held to be invalid, such invalidity shall in no way affect the remaining portions thereof which are valid, but said valid portions shall be and remain in full force and effect.

SECTION 13. All ordinances or parts of ordinances in conflict herewith are hereby repealed.







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