

ORDINANCE NO. _____

AN ORDINANCE AMENDING ARTICLE I OF CHAPTER 13 OF THE MAGNOLIA CODE AS IT PERTAINS TO REGULATION OF EXTERIOR AREAS OF REAL ESTATE AND ABATEMENT OF NUISANCES; REPEALING ANY ORDINANCES OR PARTS OF THE MAGNOLIA CODE IN CONFLICT THEREWITH; AND FOR OTHER PURPOSES

WHEREAS, the City Council for the City of Magnolia, Arkansas (“the City”) recognizes that property owners from time-to-time fail to maintain their properties in an orderly, safe, and sanitary manner, allowing the overgrowth of vegetation, the accumulation of garbage, rubbish, and other unsanitary and unsightly articles, and the stagnation of pools of water and other conditions conducive to the breeding, proliferation, and congregation of mosquitoes, flies, nuisance animals, and germs harmful to the health of the community, all of which is unsightly, unsafe, unsanitary, obnoxious, and detrimental to the public welfare of the citizens of the City; and

WHEREAS, such unkempt properties are a public nuisance and are dangerous to the health and safety of residents and other persons, can diminish property values, interfere with necessary governmental operations, and can have a blighting effect on neighborhoods; and

WHEREAS, it is necessary and desirable for the City to adopt revisions to Article I of Chapter 13 of the Magnolia Code to allow abatement of such nuisances and to assist property owners in cleaning and maintaining their properties for the benefit of the citizens of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF MAGNOLIA, ARKANSAS, IN REGULAR SESSION ASSEMBLED, THAT:

Section 1: Article I of Chapter 13 of the Magnolia Code (“the Code”) is hereby amended to read as follows:

“ARTICLE I. MAINTENANCE OF EXTERIOR AREAS

Sec. 13-1. 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:

Appliance includes, but is not limited to, refrigerators, freezers, ranges, stoves, ovens, grills, dishwashers, clothes washers and dryers, trash compactors, electronic devices including televisions and computers, water heaters and conditioners, HVAC system components and fixtures, plumbing system fixtures, and electrical system fixtures. *Appliance* does not include

freezers or refrigerators that are in use and are not visible from the road or street, unless they are in a covered carport or garage.

Brush means small, woody vegetation, including shrubs, or a dense group of shrubs or small trees

Building materials means any material used for construction purposes, including but not limited to aggregate materials, brick, blocks, cement and cement composites, concrete, electrical system components, fasteners, flooring materials, HVAC system components, insulation materials, lumber, metals, mortar, piping, plastics, plumbing system components, roofing materials, sand, siding materials, stone, timber, and tubing.

Debris means broken or torn pieces left from the destruction of something larger.

Dumping placing or depositing, or causing to be placed or deposited, an object with the purpose of discarding or abandoning said object upon a parcel of land.

Furniture includes, but is not limited to, mattresses, box springs, upholstered couches/sofas, dressers, recliners, tables, desks, bed frames, chairs, and parts thereof. *Furniture* does not include furniture or other items manufactured for outdoor use kept on a covered front porch, a deck, patio or porch at the rear of the structure.

Garbage means the animal or vegetable waste resulting from the handling, preparation, cooking, and consumption of food.

Grass means vegetation consisting of typically short plants with long, narrow leaves, growing wild or cultivated on lawns and pastures, including field-cultivated sod.

Junk means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, and waste or junked, dismantled, or wrecked automobiles, or parts thereof, or iron, steel, and other old or scrap materials, ferrous or nonferrous

Land used for agriculture means land used for the cultivation of field crops or timber or for animal husbandry.

Litter means rubbish, trash, or garbage, such as paper, cans, and bottles lying scattered about.

Nuisance means any act, omission, or property condition that is detrimental to the health, safety and/or welfare of the public in that it injures or endangers the comfort, repose, health or safety of others; offends decency; is offensive to the senses; unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage; in any way renders other persons insecure in life or the use of property; essentially interferes with the comfortable enjoyment of life and property; or tends to depreciate the value of the property of others.

Outdoor storage means the keeping of items that are not fully enclosed within a structure allowed by other city ordinance or code. This definition does not include furniture or other items manufactured for outdoor use kept on a front porch or on a deck, patio, or rear porch of a structure.

Owner means any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

Premises means a lot, plot, or parcel of land, easement or public way, including any structures thereon.

Public right-of-way means any street, road, boulevard, causeway, cul-de-sac, alley, parkway, sidewalk, trail, path, or similar parcel of land that is deeded, dedicated, or otherwise appropriated for public use including but not limited to for ingress and egress.

Public space means an area this is deeded, dedicated, or otherwise appropriated for public use, that is open and accessible to the public, or that is used or held out for use by the public, whether owned or operated by public or private interests, including but not limited to plazas, squares, parks, beaches, publicly-owned or -managed lands and buildings, and other public gathering places.

Rain barrel means a system that collects and stores rainwater runoff from a roof or other nonpermeable surface that would otherwise be lost to runoff and diverted to storm drains and/or streams.

Refuse means garbage, trash, rubbish, debris of any nature, including, without limitation, food waste, rejected animal or vegetable matter, whether or not intended for or resulting from the preparation of food, paper, clothing, grass, leaves, ashes, tin cans, bottles, and solid waste of any nature whatever.

Rubbish means combustible and non-combustible waste materials, except garbage. The term shall include the residue from the burning of wood, coal, coke, and other combustible materials; paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery, and dust and other similar materials.

Stagnant water means standing or slow-flowing water.

Trash means waste material or things that are no longer wanted or needed.

Tree means a woody perennial plant, typically having a single stem or trunk growing to a considerable height and bearing lateral branches at some distance from the ground.

Vegetation means plant life or plant cover in a particular area, including grass and weeds.

Waste means refuse from places of human or animal habitation, such as garbage, rubbish, excrement, and sewage.

Weeds means a plant, usually of vigorous growth, that is not valued where it is growing and tends to overgrow or choke out more desirable or cultivated plants. This definition includes, but is not limited to, any plant designated as a weed by the University of Arkansas Division of Agriculture in any of its publications, specifically including Dr. John Boyd, *Weeds of Arkansas: Aquatic, Lawn, Pasture and Roadside*, Univ. of Ark. Div. of Agri., Coop. Ext. Service (2015) (MP169).

Sec. 13-2. Exterior property areas regulated.

(a) Except as otherwise provided in the Code, the following conditions are declared to be and do constitute a nuisance, and it shall be unlawful for the owner or occupant of any property located within the city to allow any of the following upon its property:

- (1) Grass, weeds, or other vegetation growing at a height greater than eight (8) inches or otherwise in rank profusion upon the premises or in, along, upon, or across any abutting public right-of-way or public space.
- (2) Shade or ornamental trees infested or infected with an insect or disease when located in a manner that causes, or will cause, damage to the property of others.
- (3) Any dead or dying tree, or part thereof, which, in the opinion of the City, constitutes a hazard to persons or the property of others or the accumulation of dead or dying trees, brush, or vegetation upon the premises or in, along, upon, or across any abutting public right-of-way or public space.
- (4) Trees, brush, vegetation or any other object impeding the use of or access to a public right-of-way or public space, including vehicular or pedestrian traffic, or in any other manner causing an unauthorized obstruction of the public enjoyment of a public right-of-way or public space.
- (5) The accumulation and/or abandonment of building materials, outdoor storage of appliances, outdoor storage of furniture, waste of any kind, whether described as debris, garbage, junk, litter, refuse, rubbish, or trash, whether liquid or solid, whether household, yard, commercial, industrial, construction, or demolition, and whether dumped, spilled, burned or abandoned.
- (6) Obstruction of any stream, ditch, or drainage way without all necessary federal, state, and local licenses, permits, and authorizations.
- (7) Dumping of any grass, weeds, vegetation, trees, brush, debris, garbage, junk, litter, refuse, rubbish, trash, waste, appliances, furniture, or building materials without all necessary federal, state, and local licenses, permits, and authorizations.

- (8) Harboring insects (specifically including mosquitoes), rodents, snakes, vermin, parasites, disease-carrying pests, or biological matter harmful to the health of the community or maintaining a premises in a manner that creates a condition likely to attract or facilitate infestation of insects (specifically including mosquitoes), rodents, snakes, vermin, parasites, disease-carrying pests, or biological matter harmful to the health of the community, including the artificial accumulation of stagnant water.
- (9) Dense smoke, noxious fumes, gas, soot or cinders in unreasonable quantities, or creating or allowing disagreeable or obnoxious odors or the conditions that give rise to the emission or generation of such odors.
- (10) Failing to properly dispose of animal or fowl carcasses within a reasonable time after death.
- (11) Graffiti.
- (12) The use of tarpaulins, canvas, plastic, oil cloth, sheeting, or other similar materials as fencing or to shield or enclose any structure (including, without limitation, openings for windows, doors, walls, roofs, garage doors, or carports) except when temporarily necessary to perform repairs under a properly-issued building permit or to cover items in a carport.
- (13) Any act or condition constituting a nuisance under state law or common law.

(b) The delegation of maintenance of a property or the prevention of any of the above-enumerated items by an owner or occupant to another person or entity shall not be a defense to enforcement of this article.

Sec. 13-3. Exceptions.

(a) Restrictions concerning the following shall not apply to undeveloped land that has been continuously maintained in a natural vegetative state or areas specifically designated or recognized by city, the state, or the United States as agricultural, wetlands, open spaces, natural or wild flower areas or other designated preservation areas:

- (1) The height of grass, weeds, or other vegetation.
- (2) The accumulation of dead or dying trees, brush, or vegetation.
- (3) Obstruction of any stream or drainage way if such obstructions are naturally-occurring and not otherwise prohibited by law or regulation.
- (4) Conditions likely to attract insects (specifically including mosquitoes), rodents, snakes, vermin, parasites, pests, or biological matter, if such conditions are naturally-occurring.
- (5) Disagreeable or obnoxious odors or the conditions that give rise to the emission or generation of such odors if such orders or conditions are naturally-occurring.
- (6) Disposal of animal or fowl carcasses when death of the animal or fowl occurred on the property by natural means.

(b) Notwithstanding section 13-2(a)(8), rain barrels are allowed in the city for the purpose of collecting and storing rainwater from roofs and other nonpermeable surfaces that would otherwise be lost to runoff and diverted to storm drains and streams if all of the following requirements are met:

- (1) Equipment for rain barrels shall be obscured from view of adjacent properties and the public right-of-way through fencing, landscaping, or a combination of fencing and landscaping;
- (2) Collection and holding vessels used in the rain barrel system must be covered by a lid or a screen. If covered by a screen instead of a lid, the screen must allow water to get in but prevent the breeding of mosquitoes and other insects or biological matter harmful to the health of the community. The lid or screen, whichever is used, must be securely attached to the barrel with some form of lock in order to prevent the vessel from being opened and accessed by anyone not authorized by the owner of the rain barrel.; and
- (3) If the rain barrel system has an overflow on the side, it must be screened to prevent the breeding of mosquitos and other insects or biological matter harmful to the health of the community.

(c) Notwithstanding section 13-2(a)(5), building materials may be stored openly on the premises if they are covered and not deteriorated so as to be unusable for their ordinary purpose; stored at least eighteen (18) inches off the ground; and are so stored in conjunction with an active building permit, a project on said premises not requiring a building permit, or a business enterprise that operates under a current, exhibited privilege license.

(d) Notwithstanding section 13-2(a)(5), appliances and furniture may be stored openly on the premises if such storage is in connection with an appliance or furniture sales or service business that is operated under a current and exhibited privilege license, located on a properly zoned parcel, and all doors, latches, and locks of openly stored appliances and/or furniture are removed or made inoperable in a manner to ensure the safety of all citizens.

(e) The restrictions stated in section 13-2(a)(9) related to creating or allowing disagreeable or obnoxious odors or the conditions that give rise to the emission or generation of such odors shall not apply to county or municipal utilities, specifically including the treatment of wastewater.

Sec. 13-4. Penalty.

(a) Violation of the provisions of this article may be prosecuted by the issuance of a criminal information or by the issuance of a citation by a law enforcement officer.

(b) Any violator of this article shall be guilty of a misdemeanor, and upon conviction the violator shall be punished by a fine of \$125.00 for the first offense and \$250.00 for any subsequent offense, plus court costs.

(c) The penalty set forth above shall be in addition to any lien as provided for in this article.

Sec. 13-5. Notice of abatement.

(a) Whenever a nuisance is found to exist within the city, the mayor or the department responsible for enforcing this section, may give written notice to abate the nuisance to the owner or occupant of the property upon which such nuisance exists or upon the person causing or maintaining the nuisance.

(b) Notice shall be in writing and shall include the following:

- (1) A description of what constitutes the nuisance;
- (2) The sections of the code that are alleged to have been violated;
- (3) The location of the nuisance if the nuisance is stationary.;
- (4) An order to abate the nuisance within a stated time, which shall be reasonable under the circumstances;
- (5) A statement of acts necessary to abate the nuisance;
- (6) The time in which performance of any act is required;
- (7) A statement that if the nuisance is not abated as directed within time period therein specified, the city will abate such nuisance and assess the costs against such person; and
- (8) A statement that no further notice or grace period will be given for any repeat alleged violation of the same subsection of this section within the remainder of the same calendar year.

In addition, the notice shall state that if such alleged violations are not voluntarily corrected within the stated time as set forth in the notice, the city, through its enforcement agencies, shall have the right to enter upon the property and to take all actions necessary to correct or eliminate the condition constituting the nuisance, charge the owner for the expenses incurred in doing so and obtain a lien for the same, and institute legal proceedings charging the owner with a violation of this article.

(c) The owner or occupant of the property upon which such nuisance exists or the person causing or maintaining the nuisance shall comply with an order to abate contained in a notice of abatement within seven (7) calendar days of receipt of the notice. This deadline shall be calculated by counting the first day of the seven-day period as the day after written notice is given, by counting every calendar day, including weekends and holidays, and by establishing the deadline to take the above required actions as 11:59 p.m. (Central time) on the seventh day.

(d) Unless specifically stated otherwise, notice hereunder shall be provided by one (1) or more of the following methods:

- (1) Delivery to the owner, agent or responsible party, personally;
- (2) Regular and certified mail, return receipt requested, addressed to the owner's address of record on file with the applicable county treasurer, county collector, or county assessor; or
- (3) In case the owner of the real property is unknown, his whereabouts is not known, or he is a nonresident of this state, then by posting and keeping posted a copy of the notice in a conspicuous place on the premises alleged to be in violation.

(e) Any notice required under this section may be issued by a police officer or code enforcement officer employed by the city.

(f) No further notice, warning, or grace period is required to be given for any alleged repeat violation of the same subsection of this section within the remainder of the same calendar year as a previous violation.

Sec. 13-6. Abatement by city authorized; lien for abatement costs.

(a) After having been given a notice of abatement as provided for in section 13-5, if the owner of any owner of any property located within the city shall fail or refuse to remove, abate, or eliminate any condition as may be provided for under section 13-1 within the time provided allowed therefore, then the city is hereby authorized to take such action as is necessary to correct or eliminate the condition, including entering upon the property, and charge the costs thereof, including all administrative and collection costs, to the owner of such premises.

(b) After the work has been completed, the city shall provide notice to the owner of the total amount of the costs of abatement, including administrative and collections costs. This notice may be combined with the notice of hearing before the city council as set forth in section 13-7(b).

(c) The city shall have a lien against the property for the abatement costs, including all administrative and collection costs, pursuant to Ark. Code Ann. § 14-54-903(c)(1).

(d) Any lien hereunder shall be filed with the circuit clerk no later than one hundred (120) days after the city completes the work on the property.

(e) Any lien hereunder may be perfected and enforced as set forth in section 13-7 and Ark. Code Ann. § 14-54-903 and -904.

Sec. 13-7. Perfection and enforcement of lien.

(a) The lien provided for in this article may be enforced and collected within ten (10) years after a lien has been filed in either one (1) of the following manners:

- (1) By an action in foreclosure filed in the circuit court; or

- (2) By placement of the lien amount (as determined and certified by the city council) plus a ten (10) percent penalty for collection on the tax books for the property affected and collected accordingly, in which case the lien amount, less three (3) percent, shall be paid to the city by the county tax collector

(b) The city may enforce the lien under this article as set forth in subsection (a)(2), as follows:

- (1) The amount of any lien shall be determined at a public hearing before the city council held after thirty (30) days' written notice by mail, return receipt requested, to the owner(s) of the property and to the lienholder(s) of record. If the name of the owner(s) and/or lienholder(s) cannot be determined or if the whereabouts his or her whereabouts are not known, then the city clerk shall make an affidavit setting out the facts as to such, an attorney ad litem shall be appointed to notify the owner(s) or lienholder(s) by certified letter addressed to his or her last known place of residence if it can be found, and the amount of the lien notice shall be provided by publication 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.
- (2) The determination of the city council confirming the amount of any lien is subject to appeal by the owner or by any lienholder of record in the circuit court, filed within forty-five (45) days after the determination is made. 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.
- (3) The city shall file its lien with the circuit clerk no later than sixty (60) days after the city council confirms the lien amount, or if the lien is appealed, within sixty (60) days after the city wins on appeal.

(c) In addition to the rights and remedies stated herein, the City reserves its rights under Ark. Code Ann. § 14-54-903 to seek first-priority status of any lien created and imposed under this article.

Section 2: If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

Section 3: All Ordinances and parts of Ordinances in conflict herewith are hereby repealed as of the effective date hereof.

PASSED AND APPROVED this _____ day of _____ 2019.

ATTEST:

Parnell Vann, Mayor

Rachel Howell, City Clerk