ORDINANCE NO. 2018-05

TOWN OF BAUXITE, SALINE COUNTY, ARKANSAS

AN ORDINANCE 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 Town of Bauxite to live within an area free of unsightly and unsanitary conditions; and

WHEREAS, it is the duty of the Town to protect the health and welfare of its citizens; and

WHEREAS, Bauxite Ordinance No. 2-2013 should be repealed and replaced with the following:

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BAUXITE, SALINE COUNTY, ARKANSAS:

SECTION 1: Bauxite Ordinance No. 2-2013 is hereby repealed.

SECTION 2: Establishment of a Priority Clean-up Lien.

A. It may become necessary to order the Owner, the Occupant, or Lien Holders of lots and other real property within the town limits to cut weeds, remove garbage, rubbish and other unsightly and unsanitary articles and things upon the property; 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.

B. If the Owner, Occupant or Lien Holder of any lot or other real property within the Town of Bauxite shall neglect or refuse to remove, abate or eliminate any such conditions described in Section 2 above, after having been given a minimum of seven (7) days written notice but no more than thirty (30) days written notice to do so, then the Town 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. The Town shall have a lien against such property for the costs.

(1) The minimum seven (7) day written notice but no more than thirty (30) day written notice as set forth above shall be provided by the following methods:

a. 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. In the event Owner is unknown or a nonresident, then the provisions of Arkansas Code Ann. § 14-54-901 *et. seq.* will be followed and a copy of the written notice shall be posted on the premises.

b. 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.

c. 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.

(2) Notice described above may be issued by:

a. Police officer employed by the Town;

b. Town or Staff Attorney representing the Town; and/or

c. Code enforcement officer employed by the Town.

(3) The written Notice will describe:

a. The conditions for which the Notice is being issued;

b. The section of the Code that is alleged to be in violation;

c. The time limits for the Owner, Occupant, or Lien Holder to remedy the condition(s) before the Town takes action to remedy the conditions unilaterally pursuant to Arkansas Code Ann. §14-54-901 *et. seq.*;

d. State that if the alleged violation is not corrected then the Town's duly authorized agent or representative shall institute legal proceedings, charging the person with a violation of this section; and

e. Describe the work to be performed by the Town to establish a "Priority Clean-up Lien".

(4) A Priority Clean-up Lien is a clean-up lien for work undertaken by the Town on an unsafe and vacant structure or weed lot to remove, abate, or eliminate a condition in violation of local codes or ordinances that is given priority status over other lien holders following Notice described above and hearing described below. The Town may perfect its clean-up lien as a lien against the property if the property contains an unsafe or vacant structure or has been cited as a weed lot.

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

i. 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 town in which it is located in violation of applicable ordinance; or

ii. A home or residential property that is:

1. Unoccupied; and

2. In violation of a town safety standard.

b. 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 Town Ordinances.

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

(1) After completing the clean-up work the town shall provide a second notice to the owner and lien holders of record of the total amount of the clean-up lien, including all administrative and filing costs. The Town shall file the lien with the circuit clerk no later than one hundred twenty days (120) days after the Town completes the clean-up work on the property.

(2) This second notice shall be combined with a Notice of Hearing before the Town Council for the Town of Bauxite 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 thirty (30) days written notice of the hearing before the Town Council.

a. 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 Town Council only after publication of an affidavit prepared by the municipal recorder or town clerk setting out the facts as to an unknown address or unknown whereabouts of nonresidents. The affidavit and notice of hearing will be served upon the non-resident Defendant 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 and notice by certified mail to the last known address of the non-resident defendant if it can be found.

(3) The property owner or lienholder of record has forty-five (45) days to appeal the determination of the Town Council confirming the amount of any clean-up lien and creating and imposing any clean-up lien in accordance with the provisions of this ordinance. If the owner or lienholder fails to appeal in this time, then the lien amount is fully perfected and not subject to further contest or appeal.

(4) The Town shall file a lien with the circuit clerk no later than sixty (60) days after the Town Council confirms the lien amount, or if the lien is appealed, within sixty (60) days after the Town prevails on the appeal.

D. To Collect on and enforce a Priority Clean-up Lien, the following shall occur:

(1) The Town 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.

(2) The Town 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:

a. By an action for foreclosure in the circuit court by the Town; or

b. The amount so determined at the hearing, plus ten (10%) penalty for collection, shall be certified by the Town 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 Town by the tax collector.

(3) 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 Town 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 Town may through a duly authorized officer, issue a summons to appear in Saline County District Court, Bauxite Division, to the owner or occupant of the lot or real property, to appear in Court on the face of said summons for violations of Town Ordinances.

SECTION 4: Violation of Ordinance / Court Lien.

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 Town Council may confirm, after notice and hearing as set forth above, the amount of the District Court's fines and may pursue it as a court lien against the property subject to the notice and hearing provisions as set forth in this ordinance. A court lien does not have first priority status over prior recorded liens, no notice to prior lienholders is required, and it is appealable.

SECTION 5: Definitions.

A. Junked or abandoned automobiles are henceforth governed by the provisions of Bauxite City Ordinance No. 6 of 2018 and the provisions of said ordinance are not in conflict with the provisions as set forth herein. ~~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 than 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. 1997-5.~~ In the event any section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase, or word of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining provisions of this ordinance, as if such invalid or unconstitutional provision was not originally a part of this ordinance.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF BAUXITE, ARKANSAS, on this 19 day of November, 2018.

APPROVED:

Bill Russell, Mayor

ATTEST:

Becky Mitchell

Town Recorder